

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 23, NUMBER 5
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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on November 6, 1996. See tentative agenda beginning on page 1851 of this Administrative Register.

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

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ADMINISTRATIVE REGISTER - 1851

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - November 6, 1996, 10 a.m.

Room 131, Capitol Annex

(& E) - means that the emergency administrative regulation has previously been reviewed by the subcommittee

Legislative Ethics Commission

GENERAL ASSEMBLY

2 KAR 2:010 (& E). Legislative agent or employer registration statement, legislative agent's updated registration statement, legislative agent's notice of termination of engagement, employer's updated registration statement, employer's notice of termination of engagement.

National Guard Tuition Assistance Program

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 13:010E. National Guard Tuition Award Program.

Commercial Feeds

AGRICULTURAL EXPERIMENT STATION

- 12 KAR 2:006. Definitions.
- 12 KAR 2:011. Label format.
- 12 KAR 2:016. Brand and product names.
- 12 KAR 2:017. Product purpose statement.
- 12 KAR 2:018. Guaranteed analysis.
- 12 KAR 2:021. Guarantees.
- 12 KAR 2:026. Ingredients.
- 12 KAR 2:036. Nonprotein nitrogen.
- 12 KAR 2:041. Additives.
- 12 KAR 2:046. Poisonous or deleterious substances.
- 12 KAR 2:051. Manufacturing conditions.
- 12 KAR 2:061. Registration.
- 12 KAR 2:066. Suitability.

Pet Food

- 12 KAR 3:012. Uniform labeling format.
- 12 KAR 3:017. Brand and product names.
- 12 KAR 3:022. Guarantees.
- 12 KAR 3:027. Ingredients.
- 12 KAR 3:037. Additives.
- 12 KAR 3:042. Statement of caloric content.

Forms and Procedures

STATE BOARD OF ELECTIONS

Voting

- 31 KAR 4:040E. Absentee ballots cast in county clerk's office. (Deferred from August) (Agency Requests Deferral)
- 31 KAR 5:010E. Absentee voting. (Deferred from August) (Agency Requests Deferral)

Attorney General (Deferred from August)

DEPARTMENT OF LAW

- 40 KAR 1:040. Parties who may request an opinion. (Repeals 40 KAR 1:010; 40 KAR 1:020)
- 40 KAR 1:050. Subjects on which opinions may be issued.
- 40 KAR 1:060. Subjects on which an opinion shall not be issued.
- 40 KAR 1:070. Procedures for requesting and issuing on opinion.

National Guard Tuition Award Program

DEPARTMENT OF MILITARY AFFAIRS

106 KAR 3:010E. Kentucky National Guard Tuition Award Program.

Purchasing

FINANCE AND ADMINISTRATION CABINET

200 KAR 5:025. Memoranda of agreement and memoranda of understanding by state agencies. (Amended After Hearing)

Board of Nursing

GENERAL GOVERNMENT CABINET

201 KAR 20:390E. Nursing incentive scholarship fund.

Tourism Cabinet, Office of the Secretary

TOURISM DEVELOPMENT CABINET

300 KAR 2:010. Kentucky Tourism Development Act Sales Tax Credit Program.

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Department of Fish and Wildlife Resources

Game

301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting.

Hunting and Fishing

301 KAR 3:022. License, tag and permit fees.

DEPARTMENT OF AGRICULTURE

Linked Deposits

302 KAR 3:010E. Linked Deposit Investment Program for agribusiness. (Deferred from September)

ECONOMIC DEVELOPMENT CABINET

Kentucky Jobs Development Authority

307 KAR 2:020. Kentucky Tourism Development Act Sales Tax Credit Program.

Linked Deposit Investment Program

307 KAR 5:010E. Linked Deposit Investment Program. (Deferred from September) (Agency Requests Deferral)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection Division of Water

Water Quality

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.

401 KAR 5:005. Permits to construct, modify, or operate a facility.

401 KAR 5:006. Wastewater planning requirements for regional areas.

Division for Air Quality

General Administrative Procedures

401 KAR 50:035 (& E). Permits.

JUSTICE CABINET Department of Corrections

Office of the Secretary

501 KAR 6:050. Luther Luckett Correctional Complex.

501 KAR 6:130. Western Kentucky Correctional Complex.

Department of State Police

Candidate Selection (Deferred from October)

502 KAR 45:005E. Definitions.

502 KAR 45:035E. Application.

502 KAR 45:045E. Written examination.

502 KAR 45:075E. Register.

502 KAR 45:150E. Content Based Task Test (CBTT).

Department of Training

Concealed Deadly Weapon Licensing (Deferred from October)

503 KAR 6:010E. Carry concealed deadly weapon licensing.

503 KAR 6:020E. Carry concealed deadly weapon licensing application form.

503 KAR 6:030E. The carry concealed deadly weapon licensing applicant identification photo.

503 KAR 6:040E. Application form issuance, completion, and submission procedures.

503 KAR 6:050E. Application form denial procedures and reconsideration process.

503 KAR 6:060E. Data extraction/imaging of the application materials.

503 KAR 6:070E. The applicant background analysis process.

503 KAR 6:080E. Applicant and sheriff notification processes and procedures.

503 KAR 6:090E. The license denial process.

503 KAR 6:100E. The license suspension/reinstatement process.

503 KAR 6:110E. The license revocation/reinstatement process.

TRANSPORTATION CABINET Department of Highways

Traffic

603 KAR 5:230. The extended weight coal or coal by-products haul system and associated bridge weight limits. (Amended After

Hearing)

603 KAR 5:320E. Safety in highway work zones.

603 KAR 5:330 & E. Annual overweight permits for nondivisible loads.

EDUCATION, ARTS, AND HUMANITIES

Kentucky Board of Education Department of Education

Office of Chief State School Officer (Deferred from October)

701 KAR 5:020 (& E). Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education.

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- 701 KAR 5:055 (& E). Removal hearing procedures.
- 701 KAR 5:090 (& E). Teacher disciplinary hearings.

General Administration

Office of District Support Services

- 702 KAR 1:080 (& E). Transfer of annexed property; hearing. (Deferred from October)
- School Administration and Finance** (Deferred from October)
- 702 KAR 3:100. Data form; professional staff.
- 702 KAR 3:270. SEEK Funding Formula.
- 702 KAR 3:285 & E. School district Medicaid providers. (Not Amended After Hearing)

Pupil Transportation

- 702 KAR 5:130. Vehicles designed to carry nine (9) passengers or less, standards for. (Not Amended After Hearing)
- School Terms, Attendance and Operation** (Deferred from October)
- 702 KAR 7:055E. Repeal of 702 KAR 7:010, 7:020, and 7:050.
- 702 KAR 7:065 (& E). Designation of agent to manage high school interscholastic athletics.
- 702 KAR 7:125E. Pupil attendance.

Bureau of Learning Results Services

Assistance and Intervention Services

 (Deferred from October)

- 703 KAR 3:060E. Procedures for determining rewards and sanctions.
- 703 KAR 3:205 (& E). Management Improvement Program.
- Learning Results Services** (Deferred from October)
- 703 KAR 4:010E. The formula for determining successful schools.
- 703 KAR 4:090E. Statewide Assessment and Accountability Program; school building and local district appeal of performance judgements.

Office of Special Instructional Services

Exceptional and Handicapped Programs

- 707 KAR 1:180 (& E). Due process procedures. (Deferred from October)

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation

Administration

- 781 KAR 1:030E. Order of selection and economic need test for vocational rehabilitation services.

Department for Adult Education and Literacy

Adult Education and Literacy

- 785 KAR 1:010. Testing program.

Department for Employment Services

Unemployment Insurance

- 787 KAR 1:200 (& E). Maximum weekly benefit rate.

LABOR CABINET

Occupational Safety and Health

- 803 KAR 2:019. Receiving and unloading bulk hazardous liquids.
- 803 KAR 2:200. Confined space entry.
- 803 KAR 2:300. General.
- 803 KAR 2:301. Adoption and extension of established federal standards.
- 803 KAR 2:302. General safety and health provisions.
- 803 KAR 2:303. Walking-working surfaces.
- 803 KAR 2:304. Means of egress.
- 803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.
- 803 KAR 2:306. Occupational health and environmental control.
- 803 KAR 2:307. Hazardous materials.
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- 803 KAR 2:316. Adoption of 29 CFR Part 1910.251-.257.
- 803 KAR 2:317. Special industries.
- 803 KAR 2:319. Commercial diving operations.
- 803 KAR 2:320. Air contaminants.
- 803 KAR 2:402. General safety and health provisions.
- 803 KAR 2:403. Occupational health and environmental controls.
- 803 KAR 2:404. Personal protective and lifesaving equipment.
- 803 KAR 2:408. Tools-hand and power.
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- 803 KAR 2:425. Toxic and hazardous substances.
- 803 KAR 2:500. Maritime employment.
- 803 KAR 2:600. Occupational safety and health standards for agriculture.

Department of Workers' Claims

- 803 KAR 25:012. Resolution of medical fee disputes. (Amended After Hearing)
- 803 KAR 25:015. Procedure in Workers' Compensation enforcement hearings. (Not Amended After Hearing)
- 803 KAR 25:089 & E. Workers' compensation medical fee schedule for physicians.
- 803 KAR 25:096. Selection of physicians and treatment plans. (Amended After Hearing)
- 803 KAR 25:190. Utilization review and medical bill audit. (Amended After Hearing)

Department of Alcoholic Beverage Control

Malt Beverage Equipment, Supplies and Service

- 804 KAR 11:010. Equipment and supplies. (Not Amended After Hearing)

Department of Mines and Minerals

Division of Explosives and Blasting

- 805 KAR 4:085. Dealer registration; record requirements.
- 805 KAR 4:093. Permit to purchase or possess explosives.
- 805 KAR 4:140. Misfires.

Division of Mining

- 805 KAR 5:070. Minimum requirements for roof support and the roof control plan approval process. (Repeals 805 KAR 5:020)

(Amended After Hearing)

Miner Training, Education and Certification

- 805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians. (Deferred from September)

Department of Insurance

Kinds of Insurance; Limits of Risk; Reinsurance

- 806 KAR 5:060E. Registration of service contracts for consumer products. (Deferred from September)

Health Insurance Contracts

- 806 KAR 17:100 & E. Certificate of filing for provider-sponsored networks.
- 806 KAR 17:120 & E. Accountable health plan certification.
- 806 KAR 17:130 & E. Twenty-four (24) hour pilot insurance program.
- 806 KAR 17:140E. Health insurance rate filing requirements.

Group and Blanket Health Insurance

- 806 KAR 18:060 & E. Filing requirements for associations.

Kentucky Racing Commission

Thoroughbred Racing

- 810 KAR 1:026. Racing associations. (Deferred from September)

Department of Housing, Buildings and Construction

Plumbing

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- 815 KAR 20:120. Water supply and distribution.
- 815 KAR 20:191. Minimum fixture requirements.

Manufactured Homes and Recreational Vehicles

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Department for Public Health

Administration

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Public Assistance

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Department for Social Services

Child Welfare

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Day Care

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CABINET FOR HEALTH SERVICES

Department for Medicaid Services

Medicaid Services

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907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services. (Repeals 907 KAR 1:545) (Deferred from August)

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from August)

907 KAR 1:034 & E. Early and periodic screening, diagnosis, and treatment services.

907 KAR 1:035 & E. Payments for early and periodic screening, diagnosis, and treatment services.

907 KAR 1:140 & E. Alternative intermediate services for individuals with mental retardation or developmental disabilities.

907 KAR 1:715 & E. School-based health services.

Payment and Services

907 KAR 3:020E. Coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency. (Deferred from September)

Department for Mental Health and Mental Retardation Services

Substance Abuse

908 KAR 1:350. Licensing procedures and standards for the operation of alcohol and other drug abuse prevention programs.

Mental Health

908 KAR 2:100E. Kentucky Early Intervention Program definitions.

908 KAR 2:110E. Kentucky Early Intervention Program point of entry.

908 KAR 2:120E. Kentucky Early Intervention Program evaluation and eligibility.

908 KAR 2:130E. Kentucky Early Intervention Program assessment and service planning.

908 KAR 2:140E. Kentucky Early Intervention Program primary service coordination.

908 KAR 2:150E. Kentucky Early Intervention Program personnel qualifications.

908 KAR 2:160E. Kentucky Early Intervention Program covered services.

908 KAR 2:170E. Notice of action and administrative appeal.

908 KAR 2:180E. Kentucky Early Intervention Program mediation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Waste Management

General Administrative Procedures

401 KAR 30:005. Definitions related to 401 KAR Chapter 30.

401 KAR 30:010. Adoption without change.

401 KAR 30:031. Environmental performance standards.

401 KAR 30:040. Transfer of regulatory responsibility.

401 KAR 30:080. Standards for variances.

Identification and Listing of Hazardous Waste

401 KAR 31:005. Definitions related to 401 KAR Chapter 31. (Amended After Hearing)

401 KAR 31:010. General provisions for hazardous wastes.

401 KAR 31:030. Characteristics of hazardous waste.

401 KAR 31:040. Lists of hazardous wastes. (Amended After Hearing)

401 KAR 31:050. General provisions for special waste.

401 KAR 31:060. Rulemaking petitions for hazardous waste. (Amended After Hearing)

401 KAR 31:070. Delisted hazardous waste streams.

401 KAR 31:110. Appendix on toxicity characteristic leaching procedure.

401 KAR 31:120. Appendix on chemical analysis test methods.

401 KAR 31:160. Appendix on basis for listing hazardous waste.

401 KAR 31:170. Appendix on hazardous waste constituents.

Standards Applicable to Generators of Hazardous Waste

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401 KAR 32:030. Pretransport requirements.

401 KAR 32:040. Recordkeeping and reporting.

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Standards Applicable to Transporters of Hazardous Waste

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Standards for Owners and Operators of Hazardous Waste Storage; Treatment and Disposal Facilities

401 KAR 34:005. Definitions related to 401 KAR Chapter 34. (Amended After Hearing)

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401 KAR 34:020. General facility standards.

401 KAR 34:050. Manifest system, recordkeeping and reporting.

401 KAR 34:060. Groundwater protection. (Amended After Hearing)

401 KAR 34:070. Closure and postclosure.

401 KAR 34:080. General financial requirements.

401 KAR 34:090. Closure financial requirements.

401 KAR 34:100. Postclosure financial requirements.

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401 KAR 34:200. Surface impoundments.

401 KAR 34:210. Waste piles.

401 KAR 34:230. Landfills.

401 KAR 34:240. Incinerators.

401 KAR 34:245. Containment buildings.

401 KAR 34:250. Miscellaneous units.

401 KAR 34:275. Air emission standards for process vents.

401 KAR 34:280. Air emission standards for equipment leaks.

401 KAR 34:281. Air emission standards for tanks, surface impoundments, and containers. (Amended After Hearing)

401 KAR 34:287. Corrective action for waste management units.

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401 KAR 34:360. Appendix on the list of hazardous constituents for groundwater monitoring.

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

401 KAR 35:005. Definitions related to 401 KAR Chapter 35. (Amended After Hearing)

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401 KAR 35:020. General facilities standards (IS).

401 KAR 35:050. Manifest system, recordkeeping and reporting (IS). (Amended After Hearing)

401 KAR 35:060. Groundwater monitoring (IS).

401 KAR 35:070. Closure and postclosure (IS).

401 KAR 35:080. General financial requirements (IS).

401 KAR 35:090. Closure financial requirements (IS).

401 KAR 35:100. Postclosure financial requirements (IS).

401 KAR 35:120. Liability requirements (IS). (Amended After Hearing)

401 KAR 35:180. Use and management of containers (IS).

401 KAR 35:190. Tanks (IS).

401 KAR 35:200. Surface impoundments (IS).

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401 KAR 35:245. Containment buildings (IS). (Amended After Hearing)

401 KAR 35:250. Thermal treatment (IS).

401 KAR 35:275. Air emission standards for process vents (IS).

401 KAR 35:280. Air emission standards for equipment leaks (IS).

401 KAR 35:281. Air emission standards for tanks, surface impoundments, and containers (IS).

401 KAR 35:290. Appendix on recordkeeping instructions (IS).

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- 401 KAR 38:080. Contents of Part A application.
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- 401 KAR 38:150. Specific Part B requirements for containers.
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- 401 KAR 38:190. Specific Part B requirements for incinerators.
- 401 KAR 38:250. Specific Part B requirements for equipment.
- 401 KAR 38:500. Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility

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- 401 KAR 39:005. Definitions related to 401 KAR Chapter 39. (Amended After Hearing)
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Enforcement and Compliance Monitoring for Hazardous Waste

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- 401 KAR 43:020. Standards for small quality handlers of universal waste.
- 401 KAR 43:030. Standards for large quality handlers of universal waste. (Amended After Hearing)
- 401 KAR 43:040. Standards for universal waste transporters. (Amended After Hearing)
- 401 KAR 43:050. Standards for destination facilities.
- 401 KAR 43:060. Import requirements.
- 401 KAR 43:070. Petitions to include other waste under 401 KAR Chapter 43.

Standards for the Management of Used Oil

- 401 KAR 44:005. Definitions related to 401 KAR Chapter 44. (Amended After Hearing)
- 401 KAR 44:010. Applicability. (Repeals 401 KAR 36:050)
- 401 KAR 44:020. Standards for used oil generators.
- 401 KAR 44:030. Standards for used oil collection centers and aggregation points.
- 401 KAR 44:040. Standards for used oil transporter and transfer facilities. (Amended After Hearing)
- 401 KAR 44:050. Standards for used oil processors and refiners.
- 401 KAR 44:060. Standards for used oil burners who use off-specification used oil for energy recovery.
- 401 KAR 44:070. Standards for used oil marketers.
- 401 KAR 44:080. Standards for use as a dust suppressant and disposal of used oil.

Solid Waste Facilities

- 401 KAR 47:005. Definitions related to 401 KAR Chapter 47.

Standards for Solid Waste Facilities

- 401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

Solid Waste Planning

- 401 KAR 49:005. Definitions related to 401 KAR Chapter 49.

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
(Also see KRS Chapter 13A)

Notice of Intent

Administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

After the scheduled hearing date, if held, the administrative body shall file with the Regulations Compiler a Statement of Consideration, setting forth a summary of the comments made at the public hearing, and the responses by the administrative body. This Statement shall not be published in the Administrative Register.

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY COUNCIL ON HIGHER EDUCATION

October 3, 1996

Kentucky Council on Higher Education

(1) The subject matter of the proposed administrative regulation is an administrative hearing process titled administrative hearing procedures for a determination of residency status, **13 KAR 2:070**, which is associated with appeals of residency determinations.

(2) The Kentucky Council on Higher Education is charged under KRS 164.020 and 164.030 with the responsibility for determining tuition at and minimum standards for admission to the public higher education institutions. Pursuant to those statutory responsibilities, the Council on Higher Education has promulgated an administrative regulation titled determination of residency status for admission and tuition assessment purposes. That administrative regulation contains an appeals process which is an adjudicatory proceeding within the meaning of KRS Chapter 13B. The proposed new administrative regulation will provide a framework for those appeals and comply with the requirements of KRS Chapter 13B.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1996 at 9:30 a.m. in the conference room, Kentucky Council on Higher Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601-8204.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and

2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at the public hearing, it will be held as scheduled.

(c) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to November 29, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request, no later than November 19, 1996, to the following address: Kentucky Council on Higher Education; Attn: General Counsel, Dennis L. Taulbee; 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601-8204. The phone number is (502) 573-1555; the fax number is (502) 573-1535.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or,

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Council on Higher Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to residency status is KRS 164.020 and 164.030. The authority for the promulgation of an administrative regulation related to administrative hearings is KRS Chapter 13B.

(b) The administrative regulation the council intends to promulgate is a new administrative regulation concerning administrative hearing procedures for a determination of residency status. The new administrative regulation will provide a framework for the appeals process for residency determinations and will comply with the due process requirements of KRS Chapter 13B.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The passage of the Kentucky Administrative Hearings Act set forth due process requirements for state agencies conducting adjudicatory proceedings which decide the rights of individuals or groups. The administrative regulation, **13 KAR 2:045**, Determination of residency status for admission and tuition assessment purposes, provides for a student appeal of an institutional determination of residency status. The Council on Higher Education is the agency responsible for the final determination of that status. The appeal of residency status is an adjudicatory process which decides the rights of an individual student to a status, for admission and tuition assessment purposes, as a Kentucky resident or as a nonresident. In order to conform to the due process requirements of KRS Chapter 13B, it is necessary to develop an administrative regulation which sets forth the procedural safeguards of the appeals process.

(d) The benefits expected from the administrative regulation are: better procedural protection for students who appeal institutional determinations of residency status and a clear procedural framework for the public higher education institutions and the Council on Higher Education.

(e) This administrative regulation will be implemented by the Council on Higher Education and the eight public higher education institutions.

DEPARTMENT OF LAW
Office of the Attorney General

October 9, 1996

Department of Law

Office of the Attorney General

(1) **40 KAR 2:250**; Filing of annual reports by cemeteries.

(2) The Department of Law, Office of the Attorney General intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday,

ADMINISTRATIVE REGISTER - 1860

November 25, 1996, at 10 a.m., Eastern Time, at 1024 Capital Center Drive, Frankfort, Kentucky 40602.

- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael S. Schwendeman, Assistant Attorney General, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40602.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Attorney General at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 15.180, 367.150(4), and 367.972(2).

(b) The administrative regulation that the Office of the Attorney General intends to promulgate will not amend an existing administrative regulation. It will establish a specific date by which cemeteries regulated under KRS 367.932 to 367.974 and 367.991 must file with the Attorney General the annual reports which are already required pursuant to KRS 367.946(4).

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 367.972(2) grants to the Attorney General the authority to establish such rules and regulations as are necessary to carry out the provisions of KRS 367.932 to 367.974 and 367.991. KRS 367.946(4) requires that every person who has registered with the Attorney General pursuant to KRS 367.946(1) must file an annual report with the Attorney General which includes the information specified by 367.946(4) and information reasonably required by the Attorney General pursuant to KRS 367.946(4). The proposed administrative regulation simplifies the administration of KRS 367.932 to 367.974 and 367.991 by defining the twelve month period to be covered by the annual report as the calendar year and establishing a specific date by which such report is due. All cemeteries will now have notice of when their report must be filed.

(d) The benefits anticipated from the proposed administrative regulation are (1) providing the cemeteries with a clear due date for their annual reports and fair notice of when they must file, thus avoiding unnecessary actions by the Attorney General for delinquency when the report was not filed in a timely manner; (2) enabling the Attorney General to more efficiently monitor compliance of the industry with filing their annual reports. Staff time will be saved by not having to do research on when a given cemetery would have to file its report. Any cemeteries which have not filed by the due date would be easily identified for possible enforcement action by the Attorney General.

(e) The administrative regulation will be implemented as follows: The regulation would take effect in the year following the year in which the administrative regulation was adopted. If adopted in 1996, the annual reports by the cemeteries would be due by the specified date in 1997 for the calendar year of 1996. For those cemeteries which had been filing their annual reports based on a fiscal year that does not coincide with the calendar year, they would file a report by the specified date in 1997 for that portion of the 1996 calendar year not previously reported on. In the subsequent years, their annual report would be for the preceding calendar year.

October 9, 1996

Department of Law

Office of the Attorney General

(1) **40 KAR 2:260**; Filing of annual reports by preneed burial licensees.

(2) The Department of Law, Office of the Attorney General intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, November 25, 1996, at 11 a.m., Eastern Time, at 1024 Capital Center Drive, Frankfort, Kentucky 40602.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael S. Schwendeman, Assistant Attorney General, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40602.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Attorney General at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 15.180, 367.150(4), and 367.972(2).

(b) The administrative regulation that the Office of the Attorney General intends to promulgate will not amend an existing administrative regulation. It will establish a specific date by which all preneed burial licensees regulated under KRS 367.932 to 367.974 and 367.991 must file with the Attorney General the annual reports which are already required pursuant to KRS 367.940(4).

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 367.972(2) grants to the Attorney General the authority to establish such rules and regulations as are necessary to carry out the provisions of KRS 367.932 to 367.974

and 367.991. KRS 367.940(4) requires that every person who has registered with the Attorney General pursuant to KRS 367.940(1) must file an annual report with the Attorney General which includes the information specified by 367.940(4) and information reasonably required by the Attorney General pursuant to KRS 367.940(4). The proposed administrative regulation simplifies the administration of KRS 367.932 to 367.974 and 367.991 by defining the twelve month period to be covered by the annual report as the calendar year and establishing a specific date by which such report is due. All preneed burial licensees will now have notice of when their report must be filed.

(d) The benefits anticipated from the proposed administrative regulation are: (1) providing the preneed burial licensees with a clear due date for their annual reports and fair notice of when they must file, thus avoiding unnecessary actions by the Attorney General for delinquency when the report was not filed in a timely manner; (2) enabling the Attorney General to more efficiently monitor compliance of the industry with filing their annual reports. Staff time will be saved by not having to do research on when a given preneed burial licensee would have to file his report. Any preneed burial licensees who have not filed by the due date would be easily identified for appropriate enforcement action by the Attorney General.

(e) The administrative regulation will be implemented as follows: The regulation would take effect in the year following the year in which the administrative regulation was adopted. If adopted in 1996, the annual reports by the preneed burial licensees would be due by the specified date in 1997 for the calendar year of 1996. For those preneed burial licensees who had been filing their annual reports based on a fiscal year that does not coincide with the calendar year, they would file a report by the specified date in 1997 for that portion of the 1996 calendar year not previously reported on. In the subsequent years, their annual report would be for the preceding calendar year.

September 24, 1996

Attorney General

(1) **40 KAR 3:010.** Payment schedule to hospitals/physicians for medical examination of victims of sexual offenses.

(2) The Office of the Attorney General intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1996, at 10 a.m., at 1024 Capital Center Drive, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people

at least 10 days prior to November 21, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Pat Arnold, Assistant Director, Prosecutors Advisory Council Staff, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

(b) On request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Attorney General at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 216B.400.

(b) The administrative regulation that the Attorney General intends to promulgate will amend 40 KAR 3:010, Payment schedule to hospitals/physicians for medical examination of victims of sexual offenses. It will add the provision for the sexual assault nurse examiner to attest to the performance of the sexual assault examination and allow for payment of \$35 for an examination performed by a sexual assault nurse examiner.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Add sexual assault nurse examiner to the payment schedule for performance of sexual assault exams.

(d) The benefits expected from administrative regulation are improved services to victims of sexual assault by providing additional trained personnel to perform sexual assault examinations.

(e) The administrative regulation will be implemented by payment paid to the service provider through the Rape Victims Assistance Program, Unified Prosecutorial System, administered by the Prosecutors Advisory Council Staff, Office of the Attorney General.

October 15, 1996

Office of the Attorney General

Department of Law

(1) **40 KAR 3:020.** Protocol for operation of local multidisciplinary teams on child sexual abuse.

(2) The Attorney General intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1996, at 9 a.m. in Conference Room A - Attorney General's Office, Second Floor, 1024 Capital Center Drive, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and

2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the hearing.

(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their request to the following address: John Patterson, Office of the Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602, (502) 573-5900.

(b) On a request for public hearing, a person shall state:

1. "I will agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from John Patterson, Office of the Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation will enable the Kentucky Multidisciplinary Commission on Child Sexual Abuse to carry out its mandate to prepare and issue a model protocol which is incorporated into a regulation promulgated by the Attorney General. This model shall be used by local teams which include disciplines or agency members in addition to the Department for Social Services and law enforcement in developing their own local protocols.

(d) The benefits expected from this regulation are: This administrative regulation will ensure that policy concerns relating to investigation, prosecution and review of child sexual abuse cases are considered by local multidisciplinary teams in formulating their own protocols.

(e) The administrative regulation will be implemented as follows: The Multidisciplinary Commission on Child Sexual Abuse will approve or deny protocols developed and used by local communities.

KENTUCKY REAL ESTATE COMMISSION

October 10, 1996

Kentucky Real Estate Commission

(1) Regulation number and title; or subject matter if new: **201 KAR 11:190**, Rules of practice and procedure for hearings before the

Kentucky Real Estate Commission.

(2) The Kentucky Real Estate Commission intends to promulgate this administrative regulation relating to the implementation of KRS Chapter 13B, and to make technical changes in the regulations applying to the rules of practice and procedure before the Kentucky Real Estate Commission.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, November 26, 1996, at 10 a.m. (EST), at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people

at least 10 days prior to November 26, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Real Estate Commission at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the rules of practice and procedure before the Kentucky Real Estate Commission are KRS 13A.100(3) and 324.281.

(b) The administrative regulation that the Kentucky Real Estate Commission intends to promulgate will amend 201 KAR 11:190 to correspond to the enactment of amendments to KRS Chapter 13B, and its applicability to the Kentucky Real Estate Commission; amendments to KRS 324.170 and 324.200; the repeal of KRS 324.190 and 324.210, to make policy clarifications, to remove obsolete policy, to incorporate the provisions of KRS Chapter 13B.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to the rules of practice and procedure before the Kentucky Real Estate Commission and implements the provisions of KRS Chapter 13B as they apply to the Kentucky Real Estate Commission.

(d) The benefits expected from administrative regulation are: Inform complainants and real estate licensees with the most updated policies and procedures with the handling of complaints, to comply with KRS Chapter 13A incorporation by reference requirements and the provisions of KRS Chapter 13B.

(e) The administrative regulation will be implemented as follows:

October 10, 1996

Kentucky Real Estate Commission

(1) Regulation number and title; or subject matter if new: **201 KAR 11:400**, Agency disclosure requirements.

(2) The Kentucky Real Estate Commission intends to amend 201 KAR 11:400 to exclude commercial sales and leases applicability

of the regulation.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, November 26, 1996, at 10 a.m. (EST), at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people

at least 10 days prior to November 26, 1996, the public hearing will be cancelled.

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- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Real Estate Commission at the address listed above.

- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of an administrative regulation relating to the rules of practice and procedure before the Kentucky Real Estate Commission are KRS 13A.100(3) and 324.281.
- (b) The administrative regulation that the Kentucky Real Estate Commission intends to promulgate will amend 201 KAR 11:400 to eliminate its applicability to commercial sales and leases from agency disclosure requirements, the purpose of the regulation being to protect the individual consumer, not the commercial or business consumer; to make necessary policy clarifications.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The amendments to this administrative regulation will set forth agency disclosure requirements, to whom they apply and to whom or to what entities they do not apply.
- (d) The benefits expected from administrative regulation are: Clarify the applicability of the agency disclosure requirements.
- (e) The administrative regulation will be implemented as follows:

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

August 23, 1996

Tourism Development Cabinet

Department of Fish and Wildlife Resources

- (1) Regulation Number and Title: **301 KAR 2:221**, Waterfowl seasons and limits; **301 KAR 2:222**, Waterfowl hunting requirements; **301 KAR 2:224**, Waterfowl hunting zones.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1996 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to November 21, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

(b) In a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing"; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025, 150.340, 150.600.

(b) The administrative regulation that the department intends to promulgate will amend this administrative regulations as follows: 301 KAR 2:221: To change waterfowl seasons dates and limits to meet the requirements of federal season and limits frameworks. 301 KAR 2:222: To add requirements for waterfowl hunting on Barlow Bottoms Wildlife Management Area in Ballard County and to shorten the time when no public access is allowed on portions of the Taylorsville Lake Wildlife Management area. 301 KAR 2:224: To redefine the eastern boundary of the Pennyroyal-Coalfield Goose Zone.

(c) The necessity, function, and conformity of the proposed administrative regulation is to make Kentucky's waterfowl seasons fall within federal frameworks; to adjust season dates and hunting requirements on wildlife management areas and to change to boundaries of the Pennyroyal-Coalfield Goose zone to include whole counties.

(d) The benefits expected from the administrative regulation are permitting waterfowl hunting within sound resource conservation parameters.

(e) This administrative regulation will be implemented by publicity through season brochures and media outlets, and enforcement by the department's conservation officers.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department for Environmental Protection
Division of Water

October 4, 1996

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection, Division of Water

The subject matter of the administrative regulation to be amended is **401 KAR 8:030**, Water treatment plants; water distribution systems; certification of operators.

The Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate an administrative regulation governing the subject matter listed above.

A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1996, at 1:30 p.m. (eastern time), in the Auditorium of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Persons may also submit written comments on the proposed administrative regulation to the Division of Water at the address given below, by 4:30 p.m. (eastern time) on November 25, 1996.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1996, the public hearing will be canceled.

The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water at the above address or by telephone, 502/564-3410, or TDD 1-800-648-6056.

Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, telephone number 502/564-3410, fax number 502/564-4245.

On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

Persons who wish to file this request may obtain a request form from the Division of Water at the address listed above.

Information relating to the proposed administrative regulation relating to certification of water treatment plants and water distribution systems operators is KRS 223.160 to 223.220, 224.10-100, 224.10-110.

The administrative regulation that the Division of Water intends to promulgate will amend 401 KAR 8:030, Water treatment plants; water distribution systems; certification of operators. The cabinet intends to change the method by which water treatment systems are classified and an emergency regulation to implement these changes has been filed with the Regulations Compiler. The new method will focus on the assigned design capacity of the water plant and the type of filtration utilized in the treatment process; the present method will focus on the systems utilizing population served would be deleted. The system for classifying operators will also be changed to mirror the system classifications. The proposed amendments will reduce the on-site staffing requirements for Class III and IV systems which simply disinfect or physically treat the water. Public water systems in violation of the staffing requirements may request an extension to comply with these requirements if the system is otherwise in compliance with the remainder of 401 KAR Chapter 8. Systems electing to meet the staffing requirements by securing a contract operator will be required to submit a report outlining operation and maintenance responsibilities. Public water systems will be required to notify the cabinet of certified operator employment changes within 30 days. The proposed amendments seek to reduce the grace period allowed for operators to renew an expired license to one year. Language will allow operators with limited licenses a six month extension for renewal. Several additional administrative changes are proposed for clarification purposes. Language will be added to identify the penalties for cheating; operators with expired licenses cannot be in responsible charge of a system; and operators may apply for a state reciprocal license only if the applicant received the original license by testing for certification and all other requirements are comparable. Other provisions clarify the training required of operators with treatment and distribution licenses; operator record keeping responsibilities; the date training administrators must submit attendance rosters for completed courses; and how to calculate a continuous education unit. The regulation currently outlines operator sanctions and the procedures for administering a disciplinary action. The regulatory amendment will provide specific behaviors which may lead to disciplinary action. Also, the application for certification and license renewal application have been updated to clarify the information required; however, the changes are not significant. Changes to the application for certification are a revised layout of existing information, an area to identify if an operator is responsible for multiple facilities, clarification of the information to be provided with regard to the operator's job duties, and language specifying that the applicant's Social Security number is optional as required by federal law. The license renewal application is primarily a revised layout of existing information and language to advise that providing the Social Security number is optional.

The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 223.160 through 223.220 establishes a board of certification and authorizes the Natural Resources and Environmental Protection Cabinet to establish a program requiring certification of water system operators. KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. This administrative regulation establishes standards for classifying water treatment plants, distribution systems, and certified operators; qualifications of applicants; examination procedures; duties of the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators; provisions relating to the issuance and renewal of certificates; disciplinary actions; and other provisions necessary for the certification of operators.

The benefits expected from the administrative regulation are: a high quality and safe supply of water served by public water systems

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to protect the public's health. Trained operators assure the production of a high quality water with fewer violations and less reliance on technical assistance from cabinet personnel. Establishment of a classification system based on design capacity and treatment processes utilized will simplify the process for classifying facilities and will allow for the establishment of a classification which will remain constant unless the facility is modified or expanded. The current system is based on population served and can cause a facility class to change with the addition of a few customers. The new classification system will promote regionalization and planning for the future in that the cabinet will be able to advise a system of the operator classification required prior to facility construction.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the new provisions delineated for the certification of operators of water treatment plants and water distribution systems will apply. Certified operators as well as utility managers will be notified of the regulatory changes. In addition, an emergency regulation to implement these changes has been filed with the Regulations Compiler and is now in effect. The emergency regulation will be replaced by the ordinary regulation with any amendments when the ordinary regulation becomes effective. Copies of the emergency regulation are available by contacting the Division of Water at the above address.

JUSTICE CABINET Department of Corrections

October 14, 1996
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: Uniformed employee dress code, use of force and substance abuse treatment program.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1996 at 9 a.m., in the Fifth Floor Conference Room, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 21, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Attention: Tamela Biggs, Room 200, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:020, as follows:

1. Uniformed employee dress code (4.7) shall be added to delineate the types of clothing which shall be issued to uniformed security personnel, food support staff, maintenance staff and farm staff. The policy also sets standards for grooming and the use of accessories.

2. Use of force (9.1) shall be amended to:

- a. Reflect the correct references;
- b. Clarify the inclusion of the use of mechanical restraints;
- c. Clarify the progressive levels of force; and
- d. Comply with drafting rules in KRS Chapter 13A.

3. Substance abuse treatment program (13.8) has been added to describe the parameters of the program, including the requirements for admission and attendance, confidentiality, staffing, discharge and termination criteria.

(c) The necessity, function, and conformity of the proposed administrative regulation is: To provide consistent policies among all Department of Corrections entities and compliance with state and federal statutes.

(d) The benefits expected from the administrative regulation are: To provide consistent policies among all Department of Corrections entities and to most efficiently use departmental resources.

(e) The administrative regulation will be implemented as follows: By promulgating and enforcing the components of the various policies to provide consistent policy for the department.

October 11, 1996
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:040**, Kentucky State Penitentiary.

(2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1996, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

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1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 21, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
 - (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:040, Kentucky State Penitentiary, as follows:
 1. Inventory records and control (KSP 02-08-01) shall be amended to comply with actual practice.
 2. Inmate records (KSP 06-01-01) shall be amended to comply with actual practice.
 3. Searches and preservation of evidence (KSP 09-08-01) shall be amended to comply with actual practice.
 4. Special security unit (KSP 10-02-05) shall be amended to comply with actual practice.
 5. Behavioral counseling record (KSP 100000-08) shall be deleted based upon duplication of this information in CPP 15.6.
 6. Inmate personal property (KSP 17-01-01) shall be amended to comply with actual practice.
 7. Disposition of unauthorized property (KSP 17-01-02) shall be amended to reflect number change from 100000-03 and to comply with actual practice.
 8. Property room, clothing storage, and property inventory control (KSP 17-01-04) shall be amended to comply with actual practice.
 9. General guidelines and functions of the classification committee (KSP 18-01-01) shall be amended to comply with actual practice.
 10. Classification document (KSP 18-06-01) shall be amended to comply with actual practice.
 11. Protective custody unit (KSP 18-15-01) shall be amended to comply with actual practice.
 12. Inmate work programs and safety inspections of inmate work locations (KSP 19-04-01) shall be amended to comply with actual practice.
 13. Correctional industries (KSP 19-05-01) shall be amended to comply with actual practice.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows:
 1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate 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.
 2. This administrative regulation updates operating procedures at the Kentucky State Penitentiary to comply with KRS Chapter 13A and to reflect current operating procedures.
- (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
- (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

JUSTICE CABINET Department of State Police

October 15, 1996
Justice Cabinet
Department of State Police

- (1) Regulation Number and Title: Employment of cadet troopers oral interview, **502 KAR 45:055**.
- (2) The Department of State Police intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1996 at 10 a.m. at Kentucky State Police Headquarters, Commissioner's Conference Room, 919 Versailles Road, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 25, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Lt. Colonel Charles Johnson, Director, Administrative Division, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.
- (b) On the request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing," or
 2. "I will not attend the public hearing".
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department at the address listed above.

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- (7)(a) The statutory authority for the promulgation of an administrative regulation governing the selection procedures for cadet troopers is KRS 16.050. This statute vests in the State Police Personnel Board the authority to establish eligibility lists as a result of competitive testing.
- (b) The administrative regulation that the Department of State Police proposes amends 502 KAR 45:055 in that it changes the weight of the score computed as a result of the oral interview process.
- (c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is to provide the department with a means to measure the abilities of candidates and to select them accordingly.
- (d) The benefits expected to flow from this amended administrative regulation are candidates for appointment as cadet troopers who possess those sought after attributes consistent with the tasks that make up a state police officer's duties.
- (e) The amended administrative regulation will be implemented as follows: An emergency amendment to an administrative regulation.

TRANSPORTATION CABINET

November 1, 1996

Transportation Cabinet

- (1) **600 KAR 4:010**, relating to the certification of disadvantaged, minority and women business enterprises.
- (2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation which will amend existing administrative regulation 600 KAR 4:010. In that administrative regulation the role of the in-house certification committee is unclear. Should the committee be advisory only, or should the committee have an actual vote in the approval of certification of a disadvantaged business enterprise? In addition to addressing this issue, the Transportation Cabinet will examine the entire certification process to ensure that it is functioning as well as possible.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1996 at 10 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 21, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the certification of disadvantaged, minority or women business enterprises is KRS 174.080 and 49 CFR 23.
- (b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation, 600 KAR 4:010 by clearly establishing the role of the certification committee.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 49 CFR 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet, as a recipient of USDOT funds, is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program. It also sets forth the requirement that certified and prequalified DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.
- (d) The benefit expected is the removal of uncertainty about the role of the certification committee.
- (e) The change to the administrative regulation will be implemented by informing all concerned of the role of the certification committee.
- (8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than November 11, 1996.

November 1, 1996

Transportation Cabinet

- (1) **600 KAR 5:010**, relating to the transportation of nonpublic school students.
- (2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation amending 600 KAR 5:010 relating to the transportation of nonpublic school students because the existing administrative regulation only addresses the program through fiscal year 1995-96. It is necessary to amend the administrative regulation to address at least the next two fiscal years since the General Assembly appropriated \$2 million each year of the current biennium for this purpose.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1996 at 11 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, State Office Building, Frankfort, Kentucky 40622.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 21, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the transportation of nonpublic school students is the budget bill enacted by the 1996 General Assembly, House Bill 379, Chapter 380 of the 1996 Acts.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 600 KAR 5:010. It will address the administration of the reimbursement program for the transportation of nonpublic school students through the next two fiscal years.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Commonwealth's Biennium Budget for fiscal years 1996-98 included \$2 million each year for the reimbursement of the cost incurred by a fiscal court in the transportation of nonpublic school students. This administrative regulation is necessary to establish the eligibility criteria for application for a portion of the \$2 million appropriated each fiscal year of the biennium.

(d) The benefits expected from the administrative regulation are increased safety for nonpublic school students as they are transported to and from school.

(e) The administrative regulation will be implemented as follows: Each eligible fiscal court will be allowed to submit an application for reimbursement of the costs it incurred in the transportation of nonpublic school students. If the total amount requested for reimbursement exceeds \$2 million, the Transportation Cabinet will prorate the funds among the eligible applicants.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than November 15, 1996.

November 1, 1996

Transportation Cabinet

(1) 603 KAR 3:080 relating to advertising devices.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing advertising devices (billboards and on-premise signs).

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1996 at 2 p.m. local prevailing time, in Training Rooms A and B on the first floor of the State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 21, 1996 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the advertising devices is KRS 177.860, 23 USC 131, 23 CFR Part 750.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 603 KAR 3:080. It will add the portions of the National Highway System as approved by the federal government which are not already governed by this administrative regulation. Federal law requires that billboards be controlled along any highway which is part of the National Highway System. The Transportation Cabinet will also examine its prohibition against the use of commercial messages on an on-premise electronic changing sign. The Transportation Cabinet intends to amend its existing administrative regulation to comply with the recent Kentucky Supreme Court decision regarding the cabinet's regulation of commercial speech. Further, the Transportation Cabinet intends to once again examine the need for issuance of an encroachment permit in order to trim trees which are blocking the traveling public's view of a legal billboard. Since the Transportation Cabinet has not issued such permits in several years, the billboard industry and billboard lessors have become distressed at the number of billboards whose contents are obscured. The Transportation Cabinet feels it is time to once again address the issue.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway and federal aid primary highways. This administrative regulation is the means used by the Department of Highways to establish those standards. In addition, KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation sets forth standards for determining when the Department of Highways shall pay just compensation. The enactment of these statutes was in response to a federal mandate. 23 USC 131 and 23 CFR Part 750 require minimum standards for the control of advertising devices for all states. In addition, federal law requires more stringent control of advertising devices for those states which have entered into a bonus agreement with the Federal Highway Administration. Kentucky was one of the states which has agreed since the early 1960's to the more stringent control of outdoor advertising devices. As a bonus state,

Kentucky has received several million dollars in bonus funds from the Federal Highway Administration for the control and removal of outdoor advertising devices. The requirements of this administrative regulation mirror the requirements of the Bonus Agreement Act. Since the establishment of the National Highway System earlier this year, the Federal Highway Administration has notified the Transportation Cabinet any road segment which is included in the National Highway System but not governed by this administrative regulation must be added to this administrative regulation. Therefore, the Transportation Cabinet is proposing to add control to those highways.

(d) The benefits expected from the administrative regulation change are compliance with the federal mandate and Supreme Court decision. Further, the numbers of persons expressing their need/wish to have trees trimmed in front of billboards has increased; thus, necessitating the cabinet once again address the issue of issuing encroachment permits to trim trees in front of billboards.

(e) The administrative regulation will be implemented as follows: The listing of roads on which billboards must be controlled will be expanded to include National Highway System segments. The language regarding public service announcements and electronic flashing changeable message boards will be amended to comply with the Supreme Court decision. If sufficient evidence is issued at the public hearing to warrant change in the administrative regulation regarding the issuance of encroachment permits for tree trimming, the Transportation Cabinet will require the applicant for the encroachment permit pay for all of the costs the Transportation Cabinet incurs in removing the trees. This will include a administrative costs of the Transportation Cabinet, review of the permit application by an arborist, and contracting with a firm with significant tree removal experience.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than November 10, 1996.

EDUCATION PROFESSIONAL STANDARDS BOARD

September 23, 1996

Education Professional Standards Board

(1) **704 KAR 20:430.** Repeal of 704 KAR 20:001, 704 KAR 20:002, 704 KAR 20:032, and 704 KAR 20:040.

(2) The Education Professional Standards Board intends to repeal the administrative regulations cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 22, 1996 at 10 a.m. at the 1st Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 22, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the requirements for teacher education programs is found in KRS 161.028.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will repeal 704 KAR 20:001, 704 KAR 20:002, 704 KAR 20:032, and 704 KAR 20:040.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: The standards for accrediting teacher education programs have not been updated for several years. The repeal of these regulations allows the new standards to be implemented by the Education Professional Standards Board. The use of extant teaching prior to completing the professional education portion of the teacher education program will be eliminated. The use of correspondence credits in professional education courses precludes the inclusion and monitoring of classroom observations within teacher education programs.

(d) The benefits expected from administrative regulation are: (1) The number and volume of regulations for accrediting teacher education institutions and approving teacher education programs will decrease. (2) Regulations relating to the approval of teacher education programs will be simplified and consolidated for ease of use.

(e) The administrative regulation will be implemented as follows: Each institution of higher education having accredited teacher education programs will be copied with this regulation and required to forward an acknowledgement of receipt. Staff will be available on request, to respond to specific questions relating to the regulation.

June 1996

Education Professional Standards Board

(1) **704 KAR 20:585,** Procedures for certificate revocation, suspension, voluntary surrender, reinstatement and reissuance, and application denial.

(2) The Education Professional Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 22, 1996, at 10 a.m. in the first floor conference room at the Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 22, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to revocation of certificates is KRS 161.028 and 161.120.
- (b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:585. This regulation was adopted in 1993. Prior to 1993, revocation procedures were specified in 704 KAR 20:580 which was adopted in 1992.
- (c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 161.120 provides that any certificate issued under KRS 161.010 to 161.100 or any certificate or license issued under any previous law to superintendents, principals, teachers, supervisors, directors of pupil personnel, or other administrative supervisory, or instructional employees may be revoked by the Education Professional Standards Board for reasons specified in the statute. The statute also provides for a hearing process as a part of the revocation procedures. The proposed amendments are to comply with revisions to KRS 161.120 made by the 1996 Kentucky General Assembly and to comply with the provisions of KRS Chapter 13B.
- (d) The benefits expected from administrative regulation are: Conformance of regulation with statutory changes.
- (e) The administrative regulation will be implemented as follows: The amended regulation will be communicated to local school superintendents and professional education organizations by the Office of Teacher Education and Certification.

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education

October 15, 1996

Workforce Development Cabinet

State Board for Adult and Technical Education

- (1) Regulation Number and Title: **780 KAR 3:070**, Attendance, compensatory time and leave.
- (2) The Workforce Development Cabinet, State Board for Adult and Technical Education, intends to amend an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1996, 1 p.m. in the third floor conference room, 500 Mero Street, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 21, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Delmus Murrell, Secretary, State Board for Adult and Technical Education, 500 Mero Street, 20th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the State Board for Adult and Technical Education at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 151B.035.
- (b) The administrative regulation that the department intends to promulgate will amend 780 KAR 3:070, Attendance, compensatory time and leave. The amendment will allow 10 1/2 month employees to take annual leave outside the 10 1/2 month employment year up to at least the amount of annual leave earned in the fiscal year if approved due to lack of opportunity to take accrued annual leave.
- (c) The necessity, function, and conformity of the proposed amendment is to allow 10 1/2 month employees to take earned annual leave outside the 10 1/2 month employment year provided there is not opportunity enough to take annual leave during the school year.
- (d) The benefits expected from this administrative regulation are that teachers could take annual leave in the summer if they did not have opportunity to use annual leave earned that year during the 10 1/2 month period.
- (e) The administrative regulation will be implemented as follows: The school principal or director and the regional director will determine whether a secondary vocational school teacher will be paid for accrued annual leave which was not taken due to lack of opportunity during the

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10 1/2 month school year.

October 15, 1996

Workforce Development Cabinet

State Board for Adult and Technical Education

- (1) Regulation Number and Title: **780 KAR 3:080**, Extent and duration of school term, use of school days and extended employment.
- (2) The Workforce Development Cabinet, State Board for Adult and Technical Education, intends to amend an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1996, 1 p.m. in the third floor conference room, 500 Mero Street, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 21, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Delmus Murrell, Secretary, State Board for Adult and Technical Education, 500 Mero Street, 20th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
 - (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request form from the State Board for Adult and Technical Education at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 151B.035.
 - (b) The administrative regulation that the department intends to promulgate will: Amend Section 5 by permitting the local school to set the 10 1/2 month work year to better serve the local school districts; delete Section 6 in its entirety which provides that annual leave may be charged only when an employee is otherwise scheduled to work; add a new section to require that extended employment activities for secondary instruction be approved by the State Board for Adult and Technical Education.
 - (c) The necessity, function, and conformity of the proposed regulation is to permit local control of the 10 1/2 month work year and to restrict extended employment of state secondary vocational school teachers to activities approved by the State Board for Adult and Technical Education.
 - (d) The benefits expected from this administrative regulation are that the area vocational schools will be open to better serve the local school districts and extended employment will be restricted to specific activities which are consistent across the state.
 - (e) The administrative regulation will be implemented as follows: The local school will set the 10 1/2 month school year with approval of the regional director, and the State Board for Adult and Technical Education will approve all extended employment activities for state secondary vocational teachers.

Department for Employment Services

October 1, 1996

Workforce Development Cabinet

Department for Employment Services

- (1) Regulation Number and Title; or Subject Matter if New: **787 KAR 1:320**, Priority of deductions from benefits; relative to KRS 341.391 which provides for voluntary withholding of federal income tax from unemployment compensation.
- (2) The Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1996, at 9:30 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Beverly Haverstock, General Counsel, Workforce Development Cabinet, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.
 - (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request form from the Workforce Development Cabinet at the address listed above.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request,

in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Workforce Development Cabinet regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation:

- (a) The statutory authority for the promulgation of an administrative regulation relating to priority of deductions from benefits is KRS 151B.020 and 341.115.
- (b) The administrative regulation that the Workforce Development Cabinet intends to promulgate will not amend an existing administrative regulation. It will establish the priority of deductions to be withheld from unemployment benefit payments.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 341.391(4) provides that amounts shall be deducted and withheld from benefit payments in accordance with priorities established in administrative regulation by the secretary. This administrative regulation establishes the priority of deductions from benefits.
- (d) The benefits expected from this administrative regulation are: Establishment of deduction priority by administrative regulation is required in order to implement voluntary income tax withholding for claimants. By enabling claimants to pay their income tax obligation on benefits as received, they will avoid the need for estimated tax payments or the burden of excessive additional tax due at income tax filing time.
- (e) The administrative regulation will be implemented as follows: Voluntary income tax withholding from benefits will take place only after any mandatory deductions are made as required by statute. The order of mandatory deductions set forth in this administrative regulation reflects existing department practice and will have no new effect on claimants.

LABOR CABINET Department of Workers' Claims

October 14, 1996

Kentucky Department of Workers' Claims

- (1) **803 KAR 25:036**, Computation of apportionment and attorneys' fees.
- (2) The Commissioner of the Department of Workers' Claims intends to amend the administrative regulation governing the computation of apportionment and attorneys' fees.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled November 22, 1996, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601.
- (4)(a)1. The public hearing will be held if it is requested in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
- 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to November 22, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Marcy D. Ches, Staff Attorney.
- (b) On a request for public hearing, a person shall state:
 - 1. "I agree to attend the public hearing"; or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Workers' Claims at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the computation of apportionment and attorneys' fees in workers' compensation claims is KRS 342.260.
 - (b) The administrative regulation that the Commissioner of the Department of Workers' Claims intends to promulgate will be an amendment to the existing administrative regulation, and will substitute the designation of a specific life expectancy table for the current provisions that require use of "the most recent available edition" of a table.
 - (c) The necessity and function of this amendment to 803 KAR 25:036 is the adoption of a specific life expectancy table pursuant to an amendment of KRS 342.260 approved in Senate Bill 161 enacted by the 1996 regular session of the Kentucky General Assembly. The Commissioner of the Department of Workers' Claims may adopt life tables published by the U. S. Department of Health and Human Services or other life tables developed by a qualified entity, as determined by the commissioner. The life tables designated by the commissioner through administrative regulations in effect as of the date of an opinion, award, or settlement in a workers' compensation claim shall apply to computations concerning that opinion, award, or settlement.
 - (d) The benefits expected from the amendment of this administrative regulation will be greater uniformity and certainty in the computation of benefits, and attorneys' fees, in workers' compensation claims.
 - (e) The administrative regulation will be implemented as follows: The Commissioner of the Department of Workers' Claims intends to adopt the male and female "all races" life tables published by the U. S. Department of Health and Human Services in Volume II, Section 6, Page 12, Table 6-3, of the "Vital Statistics of the United States, 1992, Life Tables."

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PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

September 20, 1996
Department of Insurance

- (1) **806 KAR 9:240**, Financial institutions licensed as noncredit related insurance agents.
- (2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1996, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
 2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of persons at least ten (10) days prior to November 21, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of Insurance, Attn: Julie P. Mix, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the address listed above.
- (7) Information relating to the proposed administrative regulation are:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation **806 KAR 9:240** is KRS 304.2-110.
 - (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will confirm the applicability of licensure statutes and consumer protections to include financial institutions.
 - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: The applicability of licensure statutes and insurance consumer protections is confirmed for financial institutions exercising their authority to sell insurance under the U.S. Supreme Court decision in Barnett Bank of Marion County, N.A. v. Nelson and the Department of Financial Institutions Parity Letter 96-2.
 - (d) The benefits expected from the administrative regulation are: The department will be able to license financial institutions as insurance agents, in accordance with the U.S. Supreme Court decision. Consumers will enjoy equal protection under the Insurance Code from the unique relationship of a financial institution insurance agent.
 - (e) The administrative regulation will be implemented as follows: A financial institution applicant for agent licensing will be accepted and processed according to the Kentucky Insurance Code. The department's enforcement division will investigate all written complaints received concerning conduct violative of the Kentucky Insurance Code and this administrative regulation.

CABINET FOR HEALTH SERVICES Office of Inspector General

September 16, 1996
Cabinet for Health Services
Office of Inspector General

- (1) **902 KAR 20:008** - License procedures and fee schedule.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 27, 1996, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 27, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7900.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation:

- (a) The statutory authority for the promulgation of an administrative regulation relating to license procedures and fee schedules is KRS 216B.042. KRS 216.530 mandates that all annual inspections of long-term care facilities be unannounced.
- (b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:018, Section 2, to permit unannounced licensure inspections of all health facilities and health services. Section 2(5) will be amended to delete references to the Commission on Health Economics Control. Section 3(2) will be amended to bring up to date the listing of license types and their fee rates. Other amendments will delete references to the Cabinet for Human Resources and will refer to the Cabinet for Health Services in accordance with Executive Order 96-862, and comply with drafting requirements of KRS Chapter 13A.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation provides for the licensure requirements to operate a health facility and establishes the fee schedule for a license.
- (d) The benefits expected from this proposed administrative regulation is that the amendments will permit unannounced routine inspections of all health facilities and health services, which may result in a more accurate evaluation of conditions. The amendments will also update the regulation by the deletion or addition of licensure categories and fee rates.
- (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

**Department for Public Health
Division of Environmental Health and Community Safety**

October 15, 1996

Cabinet for Health Services

Department for Public Health

Division of Environmental Health and Community Safety

(1) **902 KAR 47:080**, Training and certification requirements for persons who perform lead hazard detection and abatement; **902 KAR 47:090**, Accreditation of training programs and providers of educational programs for individuals who perform lead hazard detection and abatement; **902 KAR 47:100**, Permit fees, permit requirements and procedures, and standards for performing lead hazard detection and abatement in target housing and child-occupied facilities.

(2) The Cabinet for Health Services, Department for Public Health, Division of Environmental Health and Community Safety, intends to promulgate three "new" administrative regulations governing the subject matters cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for November 27, 1996, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 27, 1996 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, (502) 564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of these administrative regulations relating to 902 KAR 47:080, 902 KAR 47:090, 902 KAR 47:100 is 1996 Ky. Acts ch. 168.

(b) The "new" administrative regulations that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concern requirements for training and certification of persons who perform lead hazard detection and abatement; training programs and providers of educational programs to those individuals who perform lead hazard and detection, etc.; designation of permit fees, permit requirements and procedures, and standards for performing lead hazard detection and abatement in target housing and child-occupied facilities.

(c) The necessity, function and conformity of the proposed administrative regulations are as follows: Establish requirements for training and certification for persons who perform lead hazard detection and abatement; accreditation of training programs and providers of educational programs for individuals who perform lead hazard detection and abatement; permit fees, permit requirements and procedures, and standards for performing lead hazard detection and abatement in target housing and child-occupied facilities.

(d) The benefits expected from the administrative regulation are: Competent and effective training requirements, accreditation requirements and surveillance and abatement standards and methodology, under these regulations also concern appropriate training to ensure reduction in potential lead poisoning, and accompanying potential for lasting harmful effects to children and adults.

(e) The administrative regulation will be implemented as follows: The Division of Environmental Health and Community Safety, Department for Public Health will be responsible for the implementation of these new administrative regulations.

ADMINISTRATIVE REGISTER - 1875

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development

October 15, 1996

Cabinet for Families and Children
Department for Social Insurance
Division of Management and Development.

- (1) **904 KAR 2:410.** Child support collection and distribution.
- (2) The Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 27, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 27, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, 502-564-7900.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."

- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Cabinet for Families and Children, 3 West, 275 East Main St., Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

- (a) The statutory authority for the promulgation of an administrative regulation relating to the collection and distribution of child support collection amounts is KRS 194.050; 205.710-205.800; 405.520; 405.465-405.467; 186.570, and 1996 Ky. Acts ch. 365; and Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate shall amend 904 KAR 2:410, Child support collection and distribution. It will provide guidance for the collection of child support and medical support obligation amounts and the process of distribution of these collections as required by the Omnibus Reconciliation Act of 1993 and the resulting 1996 Kentucky statutory changes. Additional enforcement remedies include amended procedures for the revocation or suspension of driver's license when a child support arrearage of one year's amount has accumulated. To comply with the removal of federal mandates, the provision for the pass-through of the first \$50 to the IVA/IVD recipient has been removed.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: The Cabinet for Families and Children shall administer the Child Support Enforcement Program in accordance with KRS 205.710 to 205.800. KRS 205.712 provides for the child support agency to receive and process all child support payments. This administrative regulation sets forth the procedures for collection and distribution of child support payments in accordance with 1996 Ky. Acts ch. 365.

(d) The benefits expected from administrative regulation are: This regulation shall provide information concerning federal mandates and state requirements concerning the collection of child support and medical support obligation amounts, and the process for the distribution of these collections. This administrative regulation shall also provide amended policies for the implementation of the denial or suspension of a driver's license. The removal of the provision to comply with the federal mandate to pass through the first \$50 to the IVA/IVD recipient will save the state \$6 million dollars of state funds annually.

(e) The administrative regulation will be implemented as follows: This regulation shall be implemented by the Department for Social Insurance upon adoption of the regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
40 KAR 3:020E

This emergency administrative regulation establishes the model protocol which will provide guidance to local professionals regarding their roles and responsibilities in handling child sexual abuse cases. The model protocol will provide a framework for local multidisciplinary teams to use in developing a protocol for use in their communities as required by 1996 Kentucky Acts Chapter 18. It is imperative to the health and welfare of Kentucky's children that this protocol be put into place as soon as possible. In order to establish the protective measures in the protocol to safeguard the health and safety of children who have been sexually abused and to implement the provisions of 1996 Ky. Acts ch. 18, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 40 KAR 3:020 will be filed with the Regulations Compiler on October 15, 1996.

PAUL E. PATTON, Governor
 A.B. CHANDLER III, Attorney General

ATTORNEY GENERAL
Department of Law
Victims Advocacy Division

40 KAR 3:020E. Protocol for operation of local multidisciplinary teams on child sexual abuse.

RELATES TO: KRS 431.600 to 431.660, 620.020 to 620.050
 STATUTORY AUTHORITY: KRS 431.600, 1996 Ky. Acts ch. 18
 EFFECTIVE: October 15, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 431.600 requires the Kentucky Multidisciplinary Commission on Child Sexual Abuse to develop and the Attorney General to promulgate administrative regulations for a model protocol. The model shall be used by local teams in defining the roles of members in the investigation of child sexual abuse when teams include members in addition to staff from the Department for Social Services and law enforcement.

Section 1. Incorporation of Reference. (1) The "Model Protocol for the Operation of Local Multidisciplinary Teams, September 1995 Edition" developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby incorporated by reference.

(2) This document may be inspected, copied or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. Monday through Friday.

A.B. CHANDLER III, Attorney General
 APPROVED BY AGENCY: October 14, 1996
 FILED WITH LRC: October 15, 1996 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Patterson, Victim Advocate

(1) Type and number of entities affected: This administrative regulation will affect how persons work with sexually abused children in law enforcement agencies, prosecutor's offices, social service agencies, community mental health agencies and schools. It should not result in any increase in costs or expenditures to any state or

local entity. For that reason, no "Fiscal Note on Local Government" is being completed.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This will be determined after the public comment period and review of any comments which may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This will be determined after the public comment period and review of any comments which may be received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Local multidisciplinary teams must submit, for approval, a copy of the protocol developed for their community to the Kentucky Multidisciplinary Commission on Child Sexual Abuse. Teams are already required to compile an annual report of activities pursuant to existing statute (KRS 620.040). The report includes data related to victims, offenders and prosecution, general statistics on rates of reporting and substantiation, and other information which describes the team's activities.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used to for implementation and enforcement of administrative regulation. The Kentucky Multidisciplinary Commission on Child Sexual Abuse is charged with implementing the regulation promulgated by the Attorney General. The commission accepts or denies approval of the protocol submitted by local teams. The commission is provided staff support by the Office of the Attorney General, Victim Advocacy Division. This staff support is provided as part of the mission of the division. Commission members are provided no compensation for their service.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: There is no anticipated economic impact, however, this can be determined with more certainty after the public comment period.

(b) Kentucky: Same response as (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Statute required that this regulation be developed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation of multidisciplinary teams should have the effect of providing further safeguards for children who have been victims of child sexual abuse. The coordinated efforts of team members will decrease the likelihood of a child "falling through the cracks" of the child protection, mental health and criminal justice systems. Professionals will work together instead of separately to assist the child

during this traumatic phase of the child's life.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this regulation would have detrimental effects on children who have been victims of child sexual abuse.

(c) Developing a model protocol which is incorporated into administrative regulation gives further support to law enforcement, social service and other agencies who serve children in their efforts to provide a coordinated, community response to children who are endangered as a result of this crime.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: None

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. No area of the state or group will be treated differently. All children who are served by multidisciplinary teams shall be treated in a like manner. All teams are expected to develop protocols which are reflective of the guidance in the model protocol as developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse.

STATEMENT OF EMERGENCY 201 KAR 11:190E

This emergency administrative regulation amends and establishes procedures related to the rules of practice and procedure before the Kentucky Real Estate Commission. This emergency administrative regulation is required in order to comply with the amendments to KRS Chapter 13B during the 1996 Regular Session of the General Assembly. It is necessary to promulgate this emergency administrative regulation in order to immediately implement KRS Chapter 13B as it applies to the Kentucky Real Estate Commission from the filing of a complaint through an administrative hearing and posthearing procedures. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 201 KAR 11:190 was filed with the Regulations Compiler on October 14, 1996. The amendments to KRS Chapter 13B were effective on July 15, 1996, and this emergency administrative regulation is necessary to establish and implement practices and procedures before the Kentucky Real Estate Commission consistent with the requirements of KRS Chapter 13B.

PAUL E. PATTON, Governor

JOSEPH B. HELM, JR., Executive Director

KENTUCKY REAL ESTATE COMMISSION

201 KAR 11:190E. Rules of practice and procedure [for hearings] before the Kentucky Real Estate Commission.

RELATES TO: KRS 324.160

STATUTORY AUTHORITY: KRS 13A.100(3)

EFFECTIVE: October 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: To set forth practices and procedures for hearings held before the Kentucky Real Estate Commission. These rules and of practice and procedures are designed to inform the complainants and the real estate licensees of the steps to be followed in processing complaints through an administrative hearing before the Kentucky Real Estate Commission.

Section 1. Complaint Review and Investigation. (1) An aggrieved party shall file a complaint with the commission within two (2) years from actual knowledge of the cause of action, or from such time as circumstances would reasonably have put the aggrieved party on

notice of such cause of action.

(2) Any complaint filed with the commission that fails to set forth a legitimate issue under KRS Chapter 324 shall be dismissed by the commission without further investigation or hearing.

(3) (4) If a complaint filed with the commission sets forth an issue that, if proved, would entail a violation of KRS Chapter 324, that complaint shall be assigned to a commission investigator for investigation in accordance with KRS 324.150.

(4) (3) Upon receipt of the complaint and answer and upon completion of the investigation, the commission may dismiss a case without an administrative hearing if no factual controversy is presented that could result in a violation of KRS Chapter 324.

(5) (4) Upon receipt of the complaint and answer and upon completion of the investigation, the commission may dismiss a case, upon advice of its general counsel, if insufficient evidence is discovered during the investigation to justify further proceedings.

(6) (5) Upon receipt of the complaint and answer and upon completion of the investigation, the commission may set a case for hearing in accordance with KRS Chapter 13B, 324.151 and 324.170.

(7) The commission shall issue appropriate orders concerning its resolution of a pending complaint. Transmittal of such order may be sent by regular mail to the last known address of the party and the party's counsel.

(8) If the commission decides not to conduct an administrative hearing in response to a complaint, the commission shall notify the complainant and respondent of its decision in writing, with a brief statement of the commission's reasons.

Section 2. Intervention; Joinder of Additional Parties. (1) In all complaints filed before the commission, the commission, or a hearing officer appointed by the commission, shall grant a petition for intervention if:

(a) The petitioner has a statutory right pursuant to KRS 324.151 to initiate the proceeding in which he wishes to intervene; or

(b) The petitioner has an interest which is or may be adversely affected by the outcome of the proceeding.

(2) A petition for intervention shall be filed with the commission and copies mailed to all parties named in the complaint or in the notice of hearing, at least fourteen (14) days before the hearing. The parties shall have seven (7) days in which to file any response they may have to the petition to intervene. The motion for intervention will then stand submitted for decision by the commission or the hearing officer, if one has been appointed.

(3) A petition to intervene may be granted by the commission or hearing officer, if one has been appointed, after consideration of the following factors and a determination that intervention is in the interests of justice:

(a) The nature of the issues;

(b) The adequacy of representation of the petitioner's interest that will be provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the commission's ability to implement its statutory mandate.

(4) If a petitioner qualifies for intervention under subsection (3) of this section, the commission or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that the intervention was granted or any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures to promote the orderly and prompt conduct of the proceedings;

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discov-

ery, and other participation in the proceedings; or
 (d) Any other condition which in the interests of justice will provide for the expedient resolution of a complaint, conduct of proceedings or a hearing.

(5) The commission or the hearing officer, if one has been appointed, shall, at least three (3) working days prior to a hearing, issue an order granting or denying each then pending petition for intervention, specifying any conditions for participation under subsection (4) of this section and briefly state the reasons for the order. The commission or the hearing officer shall promptly provide notice of an order granting, denying or modifying an intervention to the petitioner for intervention, and to all parties.

Section 3. Motions and Requests for Withdrawal of Complaints or Dismissal. (1) All motions of any nature must be in writing and filed with the Kentucky Real Estate Commission and shall be served on every other party to the action and the hearing officer assigned to the case.

(2) The party filing a motion shall tender a proposed order granting the relief requested.

(3) The movant may file a brief memorandum supporting the motion, and opposing parties may file brief memoranda in reply. Further memoranda (e.g., reply to response) shall not be filed.

(4) Every motion and response, the grounds of which depend upon the existence of facts not appearing in evidence, shall be supported by affidavits demonstrating such facts.

(5) Every motion, the grounds of which depend upon the existence of facts which movant contends are shown in the evidence or are admitted by the pleadings, shall make reference to the point in the record where that evidence or admission is found.

(6) Motions to dismiss or other motions affecting a substantive issue must be considered by a quorum of the commission members. Procedural issues, including motions for continuances or discovery motions may be ruled upon by the chairperson [chairman] of the commission or the hearing officer appointed by the commission.

(7) [(2)] Motions for a continuance of a hearing shall only be granted for good cause. A scheduling conflict of a party, a witness or an attorney for a party shall not be good cause for a continuance unless the request for the continuance is received within ten (10) working days of receipt of the notice of hearing.

(8) [(2)] A complainant has the right to withdraw a complaint within twenty (20) days of the date of the complaint or prior to the commission's receipt of an answer filed in accordance with KRS 324.151, whichever is earlier. Complaints may be withdrawn subsequent to this deadline only upon a showing of good cause and with the approval of the commission.

Section 4. [3-] Discovery. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rule 27, which shall not apply to practice before the commission or a hearing officer.

(2) In all cases for a hearing before the commission, discovery through written or oral depositions, interrogatories, or requests for admission shall be permitted; provided that:

(a) The time, place and method of discovery imposes no undue burden upon the witness and other parties;

(b) Any oral deposition must be taken where the witness resides or does business;

(c) All the discovery will be completed fifteen (15) days prior to the hearing date, unless otherwise ordered by the commission or hearing officer, if one has been appointed; and [transcribed prior to the hearing date; and]

(d) Copies of all discovery documents and depositions are filed with the commission at the cost of the party requesting discovery on or before the date set for a hearing.

(3) The commission or hearing officer, if one has been appointed, may issue subpoenas and discovery orders when requested by a

party or on its own volition. When a subpoena is disobeyed, any party may apply to the Circuit Court of the Judicial Circuit in which the administrative hearing is to be held for an order requiring obedience. Failure to comply with an order of the Circuit Court shall be cause for punishment as a contempt of the court.

(4) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of telephonic deposition must include the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) That all opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party must contribute proportionate costs of the conference call.

(5) [(2)] The chairperson [chairman] of the commission or the hearing officer appointed in that case shall have the right to deny, limit, restrict or mandate discovery.

(6) [(2)] Any notice of deposition must be served on the general counsel of the commission and the general counsel shall have the right to attend and participate in all depositions or other discovery proceedings pertaining to a case before the commission.

(7) [(4)] The commission's general counsel may, in his discretion, allow the parties to a case before the commission to review the investigative file of that case. If disclosure of said file prior to the hearing may impede or obstruct the prosecution of that case, the investigative file shall not be disclosed until the termination of the administrative proceedings.

Section 5. [4-] Prehearing Conferences and Settlement Agreements. (1) Any party or the general counsel may request and the chairperson [chairman] of the commission or appointed hearing officer may order that a prehearing conference take place in a given case. The commission may also order the convening of a prehearing conference on its own volition.

(2) A prehearing conference shall be convened and conducted by the commission or a hearing officer upon reasonable notice to all parties to deal with the exploration of jurisdictional and procedural matters, settlement possibilities or facilitation of settlement, preparation of stipulations, clarification of issues, rulings on motions and witnesses, taking of evidence, issuance of subpoenas and orders, and all other matters that will promote the orderly and prompt conduct of the hearing.

(3) Any [A] prehearing conference shall be attended by all parties, attorneys and the general counsel of the commission. [i- a hearing officer appointed by the commission may attend said conference-

(2) The purpose of a prehearing conference shall be to explore the possibility of settlement, prepare stipulations, clarify issues, address procedural motions and such other matters as will promote the orderly and prompt conduct of the hearing.]

(4) The commission or hearing officer may conduct all or part of a prehearing conference by telephone, television, or other electronic means, if each party to the prehearing conference has an opportunity to hear, and, if technically feasible, to see the entire proceeding as it occurs, and if each party agrees.

(5) Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based upon the pleadings, to regulate the conduct of the administrative hearing.

(6) [(2)] Settlement agreement may be negotiated between the general counsel for the commission, the complainant and the respondent. All settlement agreements must be in writing and clearly

provide that the parties understand that they are waiving their right to an administrative hearing and that the settlement agreement, if accepted and adopted by the commission, will become a final order.

(7) The commission shall review all proposed settlement agreements. ~~((4) Upon reviewing a proposed settlement agreement,)~~ The commission may accept or reject said proposal in its entirety; no alterations to such an agreement may become a final order without the agreement and consent of all parties to the case. If a proposed settlement agreement is rejected by the commission, the commission shall return the proposed agreement to the parties to the agreement. If a settlement agreement is accepted, the commission shall issue an order approving settlement.

Section 6. ~~(6-)~~ Hearings. (1) The chairperson ~~(chairman)~~ of the commission or the duly appointed hearing officer shall preside over all administrative hearings and shall have the authority to rule on all motions, to control the conduct ~~(procedure)~~ of the hearing and to admit or exclude testimony or other evidence.

(2) All hearings conducted pursuant to the provisions of KRS Chapter 324 and this administrative regulation, shall be in accordance with KRS Chapter 13B.

(3) Notice of an administrative hearing shall be provided pursuant to the provisions of KRS 13B.050.

(4) ~~((2))~~ Evidence on behalf of the complainant shall be presented by the general counsel for the commission, unless the complainant chooses to employ a private attorney to present said evidence. In all cases, the general counsel shall have the right to question witnesses and offer evidence into the record.

(5) ~~((3))~~ Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men and women in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing competent evidence in the discretion of the chairperson ~~(chairman)~~ of the commission or the hearing officer appointed to conduct the hearing.

(6) ~~((4))~~ Two (2) or more proceedings under the act may be consolidated ~~(joined)~~ by the commission in its discretion.

(7) ~~((5))~~ All hearings before the commission or hearing officer shall proceed in the following order, wherever practical:

(a) Opening statements in the following order:

1. General counsel;
2. Complainants;
3. Respondents;

(b) Witnesses and evidence on behalf of the complainant;

(c) Additional witnesses and evidence presented by general counsel;

(d) Witnesses and evidence on behalf of respondent;

(e) Closing statements in the following order:

1. Respondents;
2. Complainants;
3. General counsel.

(6) Testimony to be considered by the commission or hearing officer may be provided ~~(taken)~~ by deposition, in accordance with KRS 324.190(4) ~~((3))~~. A party or witness will be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and that the other parties shall ~~(will)~~ have an opportunity to cross-examine at said deposition.

Section 7. ~~(6-)~~ Posthearing Proceedings. (1) The hearing officer shall complete and submit to the commission, no later than sixty (60) days after receiving a copy of the official record of the proceeding, a written recommended order which shall include the hearing officer's findings of fact, conclusions of law and recommended disposition of the hearing, including recommended penalties, if any. The recommended order shall also include a statement fully advising the parties of their rights to file exceptions and their appeal rights.

(2) If an extension of time is needed by the hearing officer to

complete and submit his recommended order to the commission, the hearing officer may be granted an extension, not to exceed thirty (30) days, by the chairperson of the commission, and based upon substantial proof that the extension of time is needed. The statement and order granting an extension shall be included in the record of the hearing, and notice of the extension shall be sent to all parties.

(3) A copy of the hearing officer's recommended findings of fact, conclusions of law and order, and recommended disposition of the hearing shall be sent to each party and their counsel, if represented, and each party shall have fifteen (15) days from the date the recommended order was mailed within which to file exceptions to the recommended findings of fact, conclusions of law and order and recommended disposition of the hearing with the commission. Transmittal of a recommended order may be sent by regular mail to the last known address of the party and the party's counsel. Exceptions must be received by the commission within the time denominated in this subsection, consistent with Civil Rule 6.01. The case shall thereafter stand submitted to the commission for its decision.

(4) The provisions of this section shall not apply to an administrative hearing where the hearing officer conducts the hearing in the presence of the commission, and the commission renders a decision without the recommendation of the hearing officer.

Section 8. Commission Action Upon Submission of a Case. (1) The commission shall deliberate on all cases in closed session. The specific findings of the commission shall be made in open session following the commission's deliberation.

(2) The commission shall consider the entirety of the record, including the recommended findings of fact, conclusions of law and order and recommended disposition, and any exceptions duly filed to the recommended findings of fact, conclusions of law and order.

(3) The commission may accept the recommended order of the hearing officer and adopt it as the commission's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings.

(4) If a matter is remanded to the hearing officer for further proceedings, such remand shall be in writing, and shall state the reason for the remand, and include the proceedings or issues to be addressed by the hearing officer on remand. Following a remand, the matter will be returned to the commission for issuance of its final order.

(5) The final order of the commission shall be in writing, and stated in the record. If the final order differs from the recommended order of the hearing officer, the commission's order shall include separate statements of findings of fact and conclusions of law. The final order shall include the effective date of the order, fully advising the parties of their available appeal rights.

(6) The commission shall render a final order or order of remand in an administrative hearing within ninety (90) days after receipt of the official record of the hearing and submission of the hearing officer's recommended findings of fact, conclusions of law and order to the commission, unless the matter is remanded to the hearing officer for further proceedings, in which case the commission shall issue its final order within ninety (90) days after resubmission of the case for its decision.

(7) Unless waived by a party, a copy of the final order shall be transmitted to each party and to his attorney of record by certified mail, return receipt requested, sent to the last known address of the parties or their counsel, or by personal service. Service by mail shall be complete upon the date on which the commission receives the returned receipt or the returned notice.

(8) This section shall not apply to disposition of cases or settlements pursuant to KRS 13B.070(3) and Section 5 of this administrative regulation.

(9) The commission shall not reconsider any final order.

Section 9. Appeals. (1) Any party aggrieved by the action of the commission issuing a final order to a hearing, may appeal that decision pursuant to the provisions of KRS 13B.140.

(2) As a prerequisite to appeal, the aggrieved party shall first post a bond to secure the cost of the action and any award of damages, including restitution, or an award from the recovery fund, in an amount as may be approved by the Clerk of the Circuit Court, with good and solvent surety.

JOSEPH B. HELM, JR., Executive Director
APPROVED BY AGENCY: October 11, 1996
FILED WITH LRC: October 14, 1996 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Jeffrey C. Blair

(1) Type and number of entities affected: All licensed real estate brokers and sales associates; all applicants seeking licensure with the commission.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Since this is an emergency regulation, no public hearing has been held. However, it will have no effect on the cost of doing business in the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements in this regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the emergency regulations for the membership of the commission will be the only significant cost incurred by the Real Estate Commission.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements in this regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to this regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: To the extent that printing costs are incurred, funds from the Kentucky Real Estate Commission account will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Since this is an emergency regulation, no public hearing has been held. However, it will have no economic impact in the geographical area.

(b) Kentucky: Since this is an emergency regulation, no public hearing has been held. However, it will have no economic impact in the state.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The regulation complies with the specific legislative mandate passed by the 1996 General Assembly as contained in the amendments to KRS Chapter 13B; amendments to KRS 324.151, 324.170 and 324.200; the repeal of KRS 324.190 and 324.210. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because the regulation applies to all real estate brokers and licensees, and applicants for licensure in Kentucky regardless of location. All Kentuckians, whether urban or rural, are equally served and protected by this regulation of practice and procedure before the Kentucky Real Estate Commission.

STATEMENT OF EMERGENCY 301 KAR 2:221E

Waterfowl hunting season frameworks are established annually by the United States Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010, 150.025(1) [~~150.015, 150.170, 150.175, 150.235, 150.240~~], 150.305(1), 150.330, 150.340(1), (3), [~~150.360~~], 150.600(1), [~~150.603, 150.630~~], 150.990, 59 CFR 20

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(1), (2), (3), 150.600(1), 50 CFR Part 20 [~~150.015, 150.021, 150.170, 150.175, 150.330, 150.340, 150.600, 150.603, 50 CFR 20~~]

EFFECTIVE: October 2, 1996

NECESSITY, FUNCTION, AND CONFORMITY: To set waterfowl season dates and limits within federal waterfowl hunting frameworks. This amendment is necessary to adjust season dates, limits, and open or closed areas for the 1996-97 [~~1995-96~~] waterfowl season. This administrative regulation imposes a shorter season in the Ballard reporting area than permitted by federal frameworks in an effort to build Canada goose populations in that portion of the state.

Section 1. Zone Descriptions. Hunting zones, special hunt areas and reporting areas are described in 301 KAR 2:224.

Section 2. Gun and Archery Season Dates and Bag Limits for Ducks, Coots and Mergansers. (1) Season dates.

~~{a}~~ Statewide, November 28 through December 1 and December

5 through January 19. ~~[23 through November 26.~~

~~(b) Eastern Duck Zone: December 7 through January 21.~~

~~(c) Western Duck Zone: December 2 through January 16.]~~

(2) Gun and archery daily limits.

(a) Five (5) ducks, which shall include no more than:

1. Four (4) mallards, which shall include no more than one (1) hen mallard.

2. Two (2) wood ducks.

3. One (1) black duck.

4. Two (2) redheads. ~~[One (1) redhead.]~~

5. One (1) pintail.

6. One (1) canvasback.

~~(b) Fifteen (15) coots.~~

~~(c) Five (5) mergansers, which shall include no more than one (1) hooded merganser.~~

~~(d) Possession limits are double daily limits.~~

~~(3) Youth hunt.~~

~~(a) Season date: October 12.~~

~~(b) Bag limits: as specified in subsection (2) of this section.~~

~~(c) Persons sixteen (16) years old or older shall not hunt.~~

~~(d) A person over the age of eighteen (18) shall accompany the juvenile hunter.~~

~~(e) The person accompanying the juvenile hunter shall:~~

~~1. Not hunt.~~

~~2. Not be required to possess a hunting license or Kentucky waterfowl permit.~~

~~3. Remain in a position to take immediate control of the juvenile's firearm.~~

Section 3. Gun and Archery Seasons Dates and Bag Limits for Geese. (1) ~~[(a) Snow geese.]~~ White-fronted goose and brant season dates:

(a) November 28 through January 20 in the Ballard reporting area;

(b) [statewide,] November 28 [23] through January 31 in:

1. The remainder of the Western goose zone;

2. The Pennyroyal-Coalfield goose zone; and

3. The Eastern goose zone.

~~[(b) In the portion of Fulton County in the Western Goose Zone, hunters may take snow geese until the end of the Canada geese season or January 31, whichever occurs later.]~~

(2) Snow goose season dates.

(a) Pennyroyal-Coalfield and Eastern goose zones: November 28 - January 31.

(b) Western goose zone:

1. Ballard reporting area: November 28 through January 20 and February 15 through March 10.

2. That portion of Fulton County in the Western goose zone: November 28 through March 10.

3. The remainder of the Western goose zone: November 28 through January 31 and February 15 through March 10. The reporting requirements specified in 301 KAR 2:223 shall not apply during the February 15 - March 10 portion of the season.

(3) Canada goose season dates.

(a) Eastern goose zone: December 13 through January 31.

(b) Pennyroyal/Coalfield goose zone: December 16 [43] through January 19 [46].

(c) Western goose zone: December 5 through:

1. January 20 in the Ballard reporting area;

2. February 15 in the portion of Fulton County in the Western goose zone;

3. January 31 in the remainder of the Western goose zone; unless

4. The quotas specified in Section 7 of this administrative regulation are reached. [November 23 through November 26 and December 2 through January 31, or until quotas described in Section 7 of this administrative regulation are reached.]

~~(d) The portion of Fulton County in the Western Goose Zone: November 23 through November 26 and December 2 through February 15, or until quotas described in Section 7 of this administrative regulation are reached.]~~

~~(d) [(e)] West-Central and Northeast special hunt zones: January 11 [6] through January 19 [46].~~

~~(3) A person shall not hunt geese in (The following are closed to geese hunting):~~

~~(a) Breathitt, Knott, and Perry counties.~~

~~(b) The portions of Bell, Clay, Laurel, Pulaski and Whitley Counties owned by the U.S. Forest Service, including Laurel River Lake.~~

~~(c) McCreary County east of US 27.~~

~~(d) Cave Run Lake and the lands inside a boundary formed by Highways 801, 1274, 36, 211, [and] US 60 and Highway 826.~~

~~(4) A person shall not hunt Canada geese in Christian County north of Highway 68/80 [is closed to Canada geese hunting].~~

~~(5) Daily limits.~~

~~(a) Except in the Northeast special hunt zone, ten (10) geese, which shall include no more than:~~

~~1. Two (2) Canada geese.~~

~~2. Two (2) white-fronted geese.~~

~~3. Two (2) brant.~~

~~(b) In the Northeast special hunt zone, two (2) Canada geese. Persons shall not take snow geese, brant or white-fronted geese.~~

~~(6) Possession limits are double daily limits.~~

Section 4. Shooting Hours. (1) Except as specified in this administrative regulation or on wildlife management areas as stipulated in 301 KAR 2:222, one-half (1/2) hour before sunrise until sunset.

(2) In the Northeast special hunt zone, one-half (1/2) hour before sunrise until 2 p.m.

Section 5. Ballard Wildlife Management Area ~~[North of Terrell Landing Road]~~. (1) Ducks, coots and mergansers.

(a) December 5 [42] through January 18 [46] or until the Ballard reporting area goose quota is reached.

(b) During waterfowl hunts occurring before October 15.

(2) Geese, December 5 [42] through January 18 [27] or until the Ballard Reporting Area quota is reached.

(3) No hunting on Sundays, Mondays, Christmas Day or New Year's Day.

(4) Shooting hours: one-half (1/2) hour before sunrise until noon.

(5) Waterfowl hunters:

(a) Shall apply in advance as stipulated in 301 KAR 2:222.

(b) Shall not have more than ten (10) shotgun shells in their possession.

(c) Shall case their guns while using department-supplied transportation to and from blinds.

(d) Shall be accompanied by an adult if under eighteen (18) years old.

(6) More than four (4) person shall not occupy a blind.

(7) A person [Persons] shall not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15.

Section 6. Falconry Waterfowl Season and Limits. (1) Season: statewide, November 5 through January 31 for ducks, coots, mergansers, Canada geese, and except in the Western goose zone, other geese.

(2) For other geese in the Western goose zone, November 24 through November 27 and during the open gun and archery season.

(3) [(2)] Daily limit: three (3) waterfowl.

(4) [(3)] Possession limit: six (6) waterfowl.

Section 7. Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 8,000 ~~[22,425]~~ Canada geese in the Ballard reporting area before January 20, goose hunting ~~[34]~~:

(a) ~~Goose season~~ shall cease ~~[else]~~ in the Ballard reporting area.

~~[(b) In the counties associated with the Ballard Reporting Area, the goose season shall close:~~

~~1. Seven (7) days later; or~~

~~2. On the scheduled closing date, whichever occurs first.]~~

(2) If hunters reach a quota of 3,990 ~~[6,555]~~ Canada geese in the Henderson-Union reporting area before January 31:

(a) Goose hunting ~~[season]~~ shall cease ~~[else]~~ in the Henderson-Union reporting area.

(b) In the counties associated with the Henderson-Union reporting area, goose hunting ~~[season]~~ shall cease ~~[else]~~:

1. Seven (7) days later; or

2. On the scheduled closing date, whichever occurs first.

(3) If a quota of 21,000 Canada geese is reached in the Western goose zone before January 31, goose hunting shall cease in the Western goose zone.

(4) The department shall provide at least a twenty-four (24) hour notice of the time and date of early closures.

(5) Closures as stipulated in this section shall not apply to the February 15 - March 10 portion of the snow goose season.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: October 2, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

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

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

(10) Any additional information or comments: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 61, No 188, Thursday, September 26, 1996.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 50 day season with a five bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 5 ducks and may not include more than 4 mallards (no more than 1 hen mallard), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 2 redheads. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1 and March 10. The season framework for white-fronted geese is between the Saturday nearest October 1 and January 31.

The Canada goose season in the Western goose zone season may extend for 65 days (80 days in Fulton County) between October 1 and January 31 (except February 15 in Fulton County), or until the harvest of 21,000 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall be 10 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1 and March 10 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is shorter than the Western goose zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates and shooting hours were adjusted to optimizing public use within sound waterfowl conservation practices.

STATEMENT OF EMERGENCY 301 KAR 2:222E

Waterfowl hunting season frameworks are established annually by the United States Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

301 KAR 2:222E. Waterfowl hunting requirements.

RELATES TO: KRS 150.010(40), 150.025(1), ~~150.015, 150.170, 150.175, 150.235, 150.240,~~ 150.305(1), 150.330, 150.340(1), (3), ~~150.360,~~ 150.600(1), ~~150.603, 150.630,~~ 150.990, 59 CFR 20

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(1), (2), (3), 150.600(1), 50 CFR Part 20 ~~150.015, 150.021, 150.170,~~

~~150.175, 150.330, 150.340, 150.600, 150.603, 59 CFR 20]~~

EFFECTIVE: October 2, 1996

NECESSITY, FUNCTION, AND CONFORMITY: To establish statewide waterfowl hunting requirements and to specify seasons and other requirements on wildlife management areas. This amendment is necessary to specify hunting requirements for units of the Barlow Bottoms Wildlife Management Area and to shorten the closed period at Taylorsville Lake Wildlife Management Area. Selected wildlife management areas have shorter seasons or more restrictive shooting hours than allowed by federal law to optimize public use within sound waterfowl conservation practices. ~~[Swan Lake Wildlife Management Area and application procedures for certain wildlife management areas.]~~

Section 1. Definitions. (1) "Blind" means:

- (a) A concealing enclosure.
- (b) A pit.
- (c) A boat.

(2) "Party" means:

- (a) A person hunting alone; or
- (b) From two (2) to four (4) persons who share a blind.

(3) "Permanent blind" means a blind left in place more than twenty-four (24) hours.

(4) ~~[(3)]~~ "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

(5) ~~[(4)]~~ "Waterfowl" is defined by KRS 150.010(40). ~~(means ducks, geese, eests and mergansers.)~~

Section 2. Waterfowl hunters shall not use or carry:

(1) Shotgun shells containing:

- (a) Lead shot; or
- (b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting.

(2) Shot larger than size "T."

(3) Shotshells longer than three and one-half (3-1/2) inches.

Section 3. Requirements for Waterfowl Hunters in the Ballard Reporting Area, as Described in 301 KAR 2:224. (1) Waterfowl hunters:

(a) Shall hunt from blinds unless hunting in flooded, standing timber.

(b) Shall not hunt from or establish a blind:

- 1. Within 100 yards of another blind; or
- 2. Within fifty (50) yards of a property line.

(c) Shall not possess more than one (1) shotgun while in a blind.

(2) More than five (5) persons shall not occupy a blind.

(3) The requirements of subsection (1) of this section shall not apply during the February 15 - March 10 portion of the snow goose season.

Section 4. Blind Restrictions on Wildlife Management Areas. (1) Except as specified in this section or in Section 5 of this administrative regulation, on wildlife management areas:

(a) Waterfowl hunters shall not establish or hunt from:

- 1. Permanent blinds.
- 2. Blinds within 200 yards of:
 - a. Another blind; or
 - b. A waterfowl refuge.

(b) Persons shall not hunt in designated recreation areas or access points.

(c) More than four (4) persons shall not occupy a blind.

(d) Hunters shall remove decoys and personal effects from the wildlife management area daily.

(2) Persons wishing to establish permanent blinds on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake and Taylorsville Lake Wildlife Management Areas:

(a) Shall first obtain a permit from the U. S. Army Corps of Engineers.

(b) May designate one (1) other person as a partner.

(c) Shall participate in a drawing for blind permits on the Barkley, Barren, Green, Paintsville, and Taylorsville areas.

(d) Shall present a valid hunting license at the time of the drawing.

(e) Shall not hold more than one (1) permit per area.

(3) Holders of blind permits:

(a) Shall construct blinds before November 20 or forfeit the permit.

(b) Shall not lock blinds.

(c) Unless an extension of time is granted, shall remove blinds within thirty (30) days of the close of waterfowl season or be ineligible for a permit the following year.

(4) Blinds not occupied by the permit holder one-half (1/2) hour before sunrise shall be available to other hunters on a first-come, first-serve basis.

(5) Blind restrictions specified in this section shall not apply to falconers when gun or archery seasons are not open.

Section 5. Exceptions for Wildlife Management Areas. (1)(a) Statewide waterfowl seasons apply unless otherwise stated in this section.

(b) ~~[(2)]~~ If specific hunting dates are given in this section, a person shall not hunt waterfowl except on those dates. ~~[persons may hunt waterfowl only on those dates.]~~

(2) A person shall not:

(a) Hunt on areas or portions of areas marked by signs as closed to hunting;

(b) Enter areas or portions of areas marked by signs as closed to public access; or

(c) Hunt a species on areas or portions of areas marked by signs as closed to hunting for that species.

(3) Wildlife management areas in Ballard County: [Ballard Wildlife Management Area. Waterfowl hunting requirements are stipulated in 301 KAR 2:221.]

(a) Seasons and hunting requirements for the Ballard Wildlife Management Area shall be as stipulated in 301 KAR 2:221.

(b) Barlow Bottoms Wildlife Management Area.

1. A person shall:

a. Not hunt waterfowl after 12 noon;

b. Not possess more than fifteen (15) shotgun shells while waterfowl hunting;

c. Not hunt Mondays through Wednesdays;

d. During Canada goose season, check in and out daily at the designated check station.

2. When hunting from blinds assigned by the department as stipulated in Section 6 of this administrative regulation:

a. At least one (1) person in the blind shall be eighteen (18) years old or older.

b. Blinds of persons who have not checked in by 5 a.m. shall be available to other hunters on a first-come, first-served basis.

(c) Lower Bottoms Public Waterfowl Hunting Area. In addition to the requirements of paragraph (b) of this subsection:

1. A person shall not:

a. Hunt waterfowl except from permanent department blinds.

b. Except as authorized by the department, be on the area after 1 p.m. during waterfowl seasons.

2. During Canada goose seasons, permanent department blinds shall be allocated by advance application as specified in Section 6 of this administrative regulation.

(d) Peal Public Hunt Lakes. In addition to the requirements of paragraph (b) of this subsection:

1. More than seven (7) parties shall not hunt at the same time on:

a. Buck Lake; or

b. Flat Lake.

2. More than four (4) parties shall not hunt at the same time on Fish Lake.

3. More than three (3) parties shall not hunt at the same time on:

a. First Lake; or

b. Second Lake.

(e) Swan Lake Unit. In addition to the requirements of paragraph (b) of this subsection:

1. A person shall not hunt ducks, coots, mergansers or geese other than Canada geese unless:

a. The season for these species is open; and

b. The season for Canada geese is also open.

2. Waterfowl hunters shall use blinds assigned by the department as stipulated in Section 6 of this administrative regulation.

(4) Barkley Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) Persons shall establish permanent blinds within ten (10) yards of their assigned and numbered blind markers within:

1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.

2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.

(c) The following refuge areas are closed to the public:

1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light);

a. Including the row of islands on the west side of the main river channel; and

b. Not including Taylor Bay and Jake Fork Bay.

2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.

(d) From October 15 through March 15, persons shall not hunt:

1. Within 200 yards of; or

2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

(5) Barren River Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(6) Buckhorn Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(7) Cane Creek Wildlife Management Area is closed to waterfowl hunting.

(8) Cumberland Lake Wildlife Management Area. The following sections are closed to the public from October 15 through March 15:

(a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.

(b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.

(9) Cyprus-AMEX Wildlife Management Area is closed to waterfowl hunting.

(10) Grayson Lake Wildlife Management Area. Persons shall not hunt waterfowl:

(a) Within the no wake zone at the dam site marina;

(b) From the shores of Camp Webb;

(c) From the shores of the state park; or

(d) On Deer Creek Fork of Grayson Lake.

(11) Green River Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(12) Higginson-Henry Wildlife Management Area. Portions marked by signs are closed to the public.

(13) Kaler Bottoms Wildlife Management Area. Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(14) Land Between the Lakes.

- (a) The following portions are closed to the public from November 1 through March 15:
 1. Long Creek Pond.
 2. The eastern one-third (1/3) of Smith Bay.
 3. The eastern two-thirds (2/3) of Duncan Bay.
- (b) The following portions are closed to waterfowl hunting:
 1. The Environmental Education Center.
 2. Energy Lake.
- (c) Persons shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:
 1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or
 2. From boats over flooded portions of Land Between the Lakes when lake levels are above elevation 359.
- (d) Persons shall not hunt waterfowl on inland areas during quota deer hunts.
- (e) Persons shall not establish or use permanent blinds:
 1. On inland areas; or
 2. Along the Kentucky Lake shoreline of Land Between the Lakes.
- (f) Waterfowl hunters shall remove decoys and personal effects daily.
- (15) Mill Creek Wildlife Management Area is closed to waterfowl hunting.
- (16) Nolin River Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.
- (17) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.
- (18) Ohio River Waterfowl Refuge.
 - (a) Persons shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a powerline crossing at approximately river mile 911.5.
 - (b) Stewart Island is closed to the public from October 15 through March 15, except for quota deer hunting.
- (19) Peabody Wildlife Management Area.
 - (a) Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.
 - (b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:
 1. Gibraltar Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road.
 2. Sinclair Mine, as bounded by railroad tracks, the haul road and posted signs.
 3. Homestead, as bounded by the haul road and the Green River.
- (20) Peal Wildlife Management Area. Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.
- (21) Pioneer Weapons Wildlife Management Area.
 - (a) Waterfowl hunters may use breech-loading shotguns along the shoreline of Cave Run Lake.
 - (b) Waterfowl hunters shall use muzzle-loading shotguns elsewhere on the area.
- (22) Redbird Wildlife Management Area is closed to waterfowl hunting.
- (23) The main block of Robinson Forest Wildlife Management Area is closed to waterfowl hunting.
- (24) Sloughs Wildlife Management Area.
 - (a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.
 - (b) On the Grassy-Pond Powells Lake Unit, waterfowl hunters:
 1. Shall use permanent blinds provided by the department.
 2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.
 - (c) On the Jenny Hole-Highlands Creek Unit, waterfowl hunters:
 1. Shall not establish or hunt from blinds closer than 200 yards from another hunting party.
 2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.
 - (d) If the Ohio River reaches a level that requires boat access, waterfowl hunters:
 1. May hunt from boats without regard to department blinds.
 2. Shall not hunt closer than 200 yards from another boat.

- (e) Waterfowl hunters on the Crenshaw and Duncan Tracts of the Sauerheber Unit:
 1. Shall hunt from blinds assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation.
 2. May occupy blinds not claimed by the permittee by the opening of shooting hours.
 3. Shall not have more than fifteen (15) shotgun shells per person in their possession.
 4. Shall be accompanied by an adult if under eighteen (18) years of age.
 - (f) The Crenshaw and Duncan tracts are closed to hunting except waterfowl from October 15 through March 15.
 - (g) The remainder of the Sauerheber Unit is closed to the public from October 15 through March 15.
 - (25) ~~Swan Lake Wildlife Management Area.~~
 - ~~(a) Portions marked by signs are closed to the public from October 15 through March 15, except for waterfowl hunting as stipulated below.~~
 - ~~(b) Goose season: December 14 through January 28.~~
 - ~~(c) Duck, coot and merganser season: December 14 through January 14.~~
 - ~~(d) Persons shall not hunt on Mondays, Tuesdays, or Wednesdays.~~
 - ~~(e) Waterfowl hunters:~~
 - ~~1. Shall hunt from blinds assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation.~~
 - ~~2. May occupy blinds not claimed by the permittee by the opening of shooting hours.~~
 - ~~3. Shall not have more than fifteen (15) shotgun shells per person in their possession.~~
 - ~~4. Shall be accompanied by an adult if under eighteen (18) years of age.~~
 - (26) Taylorsville Lake Wildlife Management Area.
 - (a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.
 - (b) The portion east of Van Buren Boat Ramp as marked by signs is closed to the public from the Monday following the scheduled quota deer hunt through the last day of February. ~~[March 15.]~~
 - (26) ~~[(27)]~~ Westvaco Wildlife Management Area.
 - (a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.
 - (b) The portion south of the Westvaco Road as posted by signs is closed to the public from November 1 through March 15.
 - (c) Persons shall obtain a Westvaco Permit before hunting.
 - (27) ~~[(28)]~~ White City Wildlife Management Area. Shooting hours are from one-half (1/2) hour before sunrise until 2 p.m.
 - (28) ~~[(29)]~~ Yellowbank Wildlife Management Area. The area designated by signs and painted boundary markers is closed to the public from October 15 through March 15.
- Section 6. Applying for Waterfowl Hunts. (1) Persons wishing to apply to hunt waterfowl on Ballard, Swan Lake or the Sauerheber unit of Sloughs wildlife management areas shall:
- (a) Apply on forms provided by the department.
 - (b) Submit completed application forms before the deadline date on the form.
 - (2) Forms which are not completed according to the instructions on the form shall be disqualified from the drawing.
 - (3) Persons shall not apply more than one (1) time for each hunt.
 - (4) Each hunter drawn may bring up to three (3) additional hunters.
 - (5) The following are incorporated by reference. They may be obtained from or examined at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, from 8 a.m. until 4:30 p.m. eastern time during business days.
 - (a) Sloughs Wildlife Management Area Waterfowl Hunting

Application, August, 1995.

(b) Ballard Wildlife Management Area Goose Hunt Application, August, 1995.

(c) Application for Lower Bottoms/Swan Lake waterfowl blind drawings in Ballard County, August, 1996. [Swan Lake Wildlife Management Area Waterfowl Hunting Application, August, 1995.]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: October 2, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuation of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources

are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

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

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

(10) Any additional information or comments: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and other specialized hunting requirements to various wildlife areas across the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 61, No 188, Thursday, September 26, 1996.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 50 day season with a five bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 5 ducks and may not include more than 4 mallards (no more than 1 hen mallard), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 2 redheads. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1 and March 10. The season framework for white-fronted geese is between the Saturday nearest October 1 and January 31.

The Canada goose season in the Western Goose Zone season may extend for 65 days (80 days in Fulton County) between October 1 and January 31 (except February 15 in Fulton County), or until the harvest of 21,000 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall be 10 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1 and March 10 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates and shooting hours were adjusted to optimizing public use within sound waterfowl conservation practices.

STATEMENT OF EMERGENCY

301 KAR 2:224E

Waterfowl hunting season frameworks are established annually by the United States Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET

Department of Fish and Wildlife Resources

301 KAR 2:224E. Waterfowl hunting zones.

RELATES TO: KRS 150.010(40), 150.025(1), ~~150.015, 150.170, 150.175, 150.235, 150.240,~~ 150.305(1), 150.330, 150.340(1), (3), ~~150.360,~~ 150.600(1), ~~150.603, 150.630,~~ 150.990, 59 CFR 20

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(1), (2), (3), 150.600(1), 59 CFR Part 20 ~~150.015, 150.021, 150.170, 150.175, 150.330, 150.600, 150.603, 59 CFR 20~~

EFFECTIVE: October 2, 1996

NECESSITY, FUNCTION, AND CONFORMITY: Unevenly distributed waterfowl resources and federal requirements necessitate different season dates and harvest administrative regulations in different sections of the Commonwealth. This administrative regulation establishes waterfowl hunting zones. This amendment is necessary to change the boundaries of the Pennyroyal-Coalfield goose zone. ~~[names of the Cave Run Lake Special Hunt Region and the West Central Special Hunt Region.]~~

Section 1. Goose Hunting Zones. (1) The Western goose zone includes Henderson County and the portion of Kentucky west of:

- (a) US 60 from the Henderson-Union County line to US 641;
 - (b) US 641 to Interstate 24;
 - (c) Interstate 24 to the Purchase Parkway; and
 - (d) The Purchase Parkway.
- (2) The Ballard reporting area includes the portion of Ballard

County north or west of:

- (a) The Ballard-McCracken County line to State Road 358;
- (b) State Road 358 to US 60;
- (c) US 60 to the city limits of Wickliffe;
- (d) The city limits of Wickliffe to the center of the Mississippi River.

(3) Counties associated with the Ballard reporting area include:

- (a) The portion of Ballard County not included in the Ballard reporting area;

- (b) Carlisle and McCracken Counties; and
- (c) The portions of Fulton, Graves, Hickman and Marshall Counties in the Western goose zone.

(4) The Henderson-Union reporting area includes Henderson County and the portion of Union County in the Western goose zone.

(5) Counties associated with the Henderson-Union reporting area include those portions of Crittenden, Livingston and Lyon Counties in the Western goose zone.

(6) The Pennyroyal-Coalfield goose zone includes the area from the Western goose zone to and including Simpson, Warren, Butler, Ohio and Daviess Counties. ~~[between the Western goose zone and:~~

~~(a) Interstate 65 from the Tennessee line to the Green River Parkway;~~

~~(b) The Green River Parkway to the US 60 Bypass at Owensboro;~~

~~(c) The U.S. 60 Bypass to U.S. 231; and~~

~~(d) U.S. 231 to the Indiana border.]~~

(7) The Eastern goose zone includes the portions of Kentucky not included in the Western or Pennyroyal-Coalfield goose zones.

(8) The West-Central Special Hunt Zone includes:

- (a) Muhlenburg County;
- (b) Ohio County south of Rough River;
- (c) Butler County west of Highway 79 and north of Highway 70;
- (d) Hopkins County:
 1. East of Highways 814 and 109;
 2. South of US 41A between Highways 814 and Madisonville; and
 3. South of Highway 85 east of Madisonville.

(9) The Northeast Special Hunt Zone includes Bath, Menifee, Morgan and Rowan Counties, except Paintsville Lake and its shoreline in Morgan County.

Section 2. Duck, Coot, and Merganser Hunting Zones. (1) The Western duck zone includes [ie] the portion of Kentucky ~~[included]~~ in the Western and Pennyroyal-Coalfield goose zones.

(2) The Eastern duck zone includes [ie] the portion of Kentucky not ~~[included]~~ in the Western duck zone.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: October 2, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

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

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

(10) Any additional information or comments: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 61, No 188, Thursday, September 26, 1996.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 50 day season with a five bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 5 ducks and may not include more than 4 mallards (no more than 1 hen mallard), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 2 redheads. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

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The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall be 10 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1 and March 10 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is shorter than the Western goose zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates and shooting hours were adjusted to optimizing public use within sound waterfowl conservation practices.

STATEMENT OF EMERGENCY 401 KAR 8:030E

KRS 223.200 requires the Natural Resources and Environmental Protection Cabinet to adopt administrative regulations as are reasonably necessary to carry out the intent that every operator in responsible charge of a water treatment plant or water distribution system be required to hold a valid and effective certificate of competency in a class equal to or higher than the class of the particular treatment plant or distribution system where the operator is currently employed,

to protect the public health. An ordinary administrative regulation is not sufficient and an emergency exists of an imminent threat to the public health and welfare because the current classification system is based on populations served and does not focus on the types of treatment provided. This emergency administrative regulation will implement a classification system for water treatment plants which focuses more on the treatment processes used and the system design capacity rather than on population served, therefore providing greater protection for citizens of the Commonwealth. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
JAMES E. BICKFORD, Secretary

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water**

401 KAR 8:030E. Water treatment plants; water distribution systems; certification of operators.

RELATES TO: KRS Chapters 223, 224

STATUTORY AUTHORITY: KRS 223.160 to 223.220, 224.10-100, 224.10-110[, 42 USCA 300f, 300g, 300j, 40 CFR 141.2, as amended at 54 Federal Register 27526 and 27562 (1989)]

EFFECTIVE: October 7, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 223.160-223.220 establishes a board of certification and authorizes the cabinet to establish a program requiring certification of water system operators. KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use and for the certification of water plant operators. [The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising the primary enforcement responsibility.] This administrative regulation establishes standards for classification of water treatment plants and water distribution systems; qualifications of applicants; examination procedures; duties of the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators; and provisions relating to the issuance and renewal of certificates; disciplinary actions; and other provisions necessary for the certification of operators. There is no federal law or regulation governing the subject matter of this administrative regulation, therefore, this administrative regulation is not more stringent than the federal law or regulation.

Section 1. General Provisions. (1)(a) Each public water system shall ensure that each component of the system is operated according to the provisions of KRS Chapters 223 and 224 and the administrative regulations of this chapter.

(b) ~~[Direct responsible charge.]~~ Each public water system shall operate its water treatment plant and water distribution system ~~[be operated]~~ under the supervision of a certified operator who is in ~~[direct]~~ responsible charge of the system. Certified operators are not required for semipublic water systems.

(c) All ~~[The]~~ certified operators in ~~[direct]~~ responsible charge shall hold a valid certificate in a class equal to or higher than that required for the system under his supervision. A ~~[The]~~ certified operator ~~[in direct responsible charge]~~ may be an individual who has been assigned ~~[sole]~~ responsibility for the operational procedures performed at the plant ~~[operation of the system]~~, or may be a person who

is supervising ~~[has been delegated the direct responsibility to supervise]~~ others in the performance of operational procedures at the plant. ~~[their duties in operating the system. The certified operator in direct responsible charge shall be physically on the premises of the water treatment facility or otherwise performing system related duties within the system during the shifts for which the operator is responsible, except as provided in subsection (2) of this section. System related duties include but are not limited to attending local government meetings, having parts repaired, purchasing supplies and maintenance of distribution system appurtenances.]~~

(2) Staffing requirements.

(a) [Shifts.

~~(a) Water treatment systems. Public water systems shall employ a certified operator in direct responsible charge as specified in subparagraphs 1 through 4 of this paragraph;~~

~~1. Class I. Operational procedures performed at Class IA-D or IB-D water treatment systems shall be conducted under the supervision of, or by, a certified operator.~~

~~2. Class II.~~

~~a. Operational procedures performed at Class IIA water treatment systems serving a population less than 500 shall be conducted under the supervision of, or by, a Class IIA, IIIA or IVA certified water treatment plant operator. Class IIA water treatment systems serving a population equal to or greater than 500 and less than 3,000 shall be staffed with a Class IIA, IIIA or IVA certified water treatment plant operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class IIA, IIIA or IVA certified water treatment plant operator.~~

~~b. Operational procedures performed at Class IIB-D water treatment systems shall be conducted under the supervision of, or by, a Class IIA, IIB-D, IIIA, IIB or IVA certified operator.~~

~~c. Operational procedures performed at Class IIC-D water treatment systems shall be conducted under the supervision of, or by, a Class IIA, IIB-D, IIC-D, III or IV certified operator.~~

~~3. Class III.~~

~~a. Class IIIA water treatment systems shall be staffed with a Class IIIA or IVA certified water treatment plant operator in direct responsible charge of shifts where water is treated.~~

~~b. Class IIIB and IIIC water treatment systems shall be staffed by a Class III or IVA certified water treatment plant operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class III or IVA certified water treatment plant operator.~~

~~4. Class IV. Class IVA water treatment systems shall be staffed with a Class IVA certified water treatment plant operator in direct responsible charge for shifts where water is treated.~~

~~(b) Water distribution systems. Operational procedures performed within water distribution systems shall be conducted by or under the supervision of, or by, a distribution system operator certified in a class equal to or higher than the class of the system. [Furthermore, water distribution systems having booster chlorination or other treatment capabilities shall be staffed with a certified distribution operator in direct responsible charge in a class equal to or higher than the class of the distribution system during the daytime weekday shift.]~~

(b) Combination water treatment plants and water distribution systems. Operational procedures at all Class IA-D, IB-D, and IIB-D water systems shall be conducted by or under the supervision of a certified water system operator who holds a valid combination or separate water treatment and distribution system operator certificate of the appropriate class and who is in responsible charge of the system.

(c) Water treatment plants.

1. Class IIA. Operational procedures at a Class IIA water treatment plant shall be conducted by a certified water treatment plant

operator who holds a valid certificate in a class equal to or higher than Class IIA who is in responsible charge of the plant and is physically located on the premises of the water treatment plant during the daytime shift or is otherwise performing system-related duties. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class IIA, IIIA, or IVA certified water treatment plant operator.

2. Class IIIA. Operational procedures at a Class IIIA water treatment plant shall be conducted by a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIIA who is in responsible charge of the plant and is physically located on the premises of the water treatment plant when water is being treated or is otherwise performing system-related duties.

3. Class IIIB. Operational procedures at a Class IIIB water treatment plant shall be conducted by or under the supervision of a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIIB who is in responsible charge of the system.

4. Class IVA. Operational procedures at a Class IVA water treatment plant shall be conducted by a certified water treatment plant operator who holds a valid Class IVA certificate who is in responsible charge of the plant and is physically located on the premises of the water treatment plant when water is being treated or is otherwise performing system-related duties.

5. Class IVB. Operational procedures at a Class IVB water treatment plant shall be conducted by or under the supervision of a certified water treatment plant operators who holds a valid certificate in a class equal to or higher than Class IVB who is in responsible charge of the system.

(3) Certifiable personnel. Persons who are under the supervision of the operator in [direct] responsible charge are encouraged to and may become certified by the cabinet if they meet the [appropriate education and experience] requirements of Section 8 of this administrative regulation and pass the appropriate examination of the requested class. This provision shall apply only to personnel who have hands-on drinking water treatment or distribution system experience.

(4) Production personnel. On-site laboratory or distribution personnel and others who have significant routine input into the treatment [production] or distribution of potable water may be certified if they demonstrate to the satisfaction of the cabinet that they meet the education and experience requirements and possess the technical and practical knowledge to perform the procedures involved in the operation of a water treatment plant or water distribution system.

(5) A public water system may fulfill the staffing requirements of this section by securing a contract operator or an operations firm. If a public water system secures a contract operator or operations firm to operate a treatment plant or distribution system, the public water system shall provide the following information to the cabinet:

(a) Name, mailing address, and telephone number of:

1. The certified operator or contract operations firm; and

2. Principal contact within the firm for certification activities, if different;

(b) Name and certificate type and number for each certified operator;

(c) Facility name, public water supply identification number, and county location of each system for which the operator is assuming responsibility;

(d) Effective date and expiration date of the contract; and

(e) Duties and responsibilities to be performed by each party involved. [Semipublic system. Certified operators are not required for semipublic water systems.]

(6) Certificate display. If a public water system office is available at the water treatment plant or within the distribution system, each [the] operator's certificate[s] shall be prominently displayed [on the wall].

(7) Wallet card. Certified operators shall carry the cabinet-issued wallet card showing current certification status while on duty.

(8) Provisional compliance. Public water systems that are in compliance with all other provisions of 401 KAR Chapter 8 except for the requirements of subsections (1) and (2) of this section shall be in provisional compliance if:

(a) The system comes into compliance with the requirements of subsections (1) and (2) of this section within ninety (90) days of the loss of the certified operator; or

(b)1. A Class II, III, or IV public water system submits a written request to the cabinet for its approval for a provisional staffing plan which contains the information required in subsection (9) of this section;

2. The cabinet approves the provisional staffing plan; and

3. The system is meeting the provisional staffing plan.

(c) During provisional compliance, public water systems may use certified operators who possess a certificate of one (1) class lower than that required by the facility as provisional operators, if a certified operator of the appropriate class as required by subsections (1) and (2) of this section is immediately available. No more than two-thirds (2/3) of the number of operators required for the facility to maintain coverage of the hours when water is treated may be provisional operators.

(9) Provisional staffing plan.

(a) The provisional staffing plan shall demonstrate how the system will meet the requirements of subsections (1) and (2) of this section within a reasonable time frame, not to exceed two (2) years.

(b) The cabinet will approve the provisional staffing plan if:

1. The plan meets the criteria specified in subsection (8) of this section and paragraph (a) of this subsection;

2. The system is otherwise in compliance with 401 KAR Chapter 8;

3. Public health and safety will be protected throughout the period identified in the provisional staffing plan; and

4. The system does not have a history of noncompliance in the last two (2) years.

(c) The provisional staffing plan shall be considered to be approved unless the cabinet otherwise notifies the system within ninety (90) days of the receipt of the provisional staffing plan.

(d) The cabinet may approve a second provisional staffing plan for a system if the public water system is in compliance with this subsection and subsection (8) of this section, taking into consideration previous efforts made to obtain the requisite number of properly certified operators as required by subsections (1) and (2) of this section.

(10) Reporting requirements.

(a) Each public water system shall notify the cabinet in writing within thirty (30) calendar days of certified operator employment changes.

(b) Certified operators shall notify the cabinet within thirty (30) calendar days of employment or mailing address changes. Employment change information shall include the name and identification number of the public water system, the effective date of the change, and whether the operator is assuming or relinquishing responsibility for the plant or system. [Staffing compliance schedule. Class III and IV public water systems subject to the on-site staffing requirements of subsection (2) of this section shall comply with the staffing requirements by January 1, 1993.]

Section 2. Duties of the Board. In carrying out its responsibilities and with consideration given to the minimum standards and guidelines of the ABC, the board may:

(1) Examine the qualifications of applicants and recommend qualified applicants to the cabinet for certification;

(2) Review and approve substitutions for education and experience requirements;

(3) Review and assist the cabinet in the preparation of examina-

tions;

(4) Review and provide comments to the cabinet on proposed drinking water operator certification administrative regulations;

(5) Review and provide comments to the cabinet on proposed training courses and seminars designed to provide continuing education to certified operators;

(6) Review evidence and advise the cabinet regarding disciplinary actions for certified operators who fail to comply with the applicable laws and administrative regulations of the Commonwealth;

(7) Review the certification administrative regulations of states which are seeking reciprocity with the Commonwealth; and

(8) Review and provide comments to the cabinet on proposed fees for training and certification of operators.

Section 3. Application and Examinations for Certification. (1) Application. An individual desiring to be certified shall file an application with the cabinet and pay the applicable fee specified in 401 KAR 8:050, Section 3. Application shall be made on a form provided by the cabinet and incorporated by reference in Section 9 of this administrative regulation. Applications shall not be filed with the cabinet until the individual has met the minimum qualifications required in this administrative regulation.

(2) Examinations. The board and cabinet shall be jointly responsible for preparation of the examinations which shall be used in determining knowledge, ability and judgment of the applicants. The cabinet shall administer written exams unless the cabinet and board grant a waiver to allow an oral exam. Oral exams may be administered to applicants who meet the minimum qualifications outlined in Section 8 of this administrative regulation. The cabinet shall grade the examinations and notify the applicant of the outcome. Applicants shall achieve a score of at least seventy (70) percent to pass the examination. Examinations shall not be returned to the applicant, but results may be reviewed with a member of the board or cabinet upon written request by the applicant.

(3) Scheduling examinations. Examinations shall be conducted at least semiannually at places and times set by the cabinet. The cabinet shall provide advance announcement of these examinations.

(4) Exam content. The cabinet will prepare examinations to address the basic differences in the duties and responsibilities of certified operators, treatment processes, [types of facilities,] drinking water standards, surface and groundwater source characteristics and other pertinent matters.

(5) Applicant's conduct. Applicants found cheating shall be subject to disciplinary action including, but not limited to, a final score of zero on the examination, denial of future applications for certification, or the provisions of Section 5 of this administrative regulation.

(6) Confidentiality of examinations. Examination questions are confidential. Any person who copies questions, removes all or part of any examination, or reveals all or part of any examination for unauthorized use may be denied certification, be subjected to the sanctions identified in Section 5 of this administrative regulation, or be liable for civil and criminal penalties pursuant to KRS 223.991 or 224.99-010.

(7) Qualified applicants, other than those specified in subsection (5) or (6) of this section, who fail to pass an examination may register to take the examination at a regularly scheduled examination date.

Section 4. Issuance of Certificates. (1) Certification. Upon satisfactory fulfillment of the requirements of this administrative regulation and upon recommendation of the board, the cabinet shall issue a certificate to the applicant designating the classification of the water treatment plant or water distribution system for which the operator has demonstrated competency. ~~[If information related to the operator's employment or mailing address changes from the application filed for certification, the certified operator shall provide written notification to the division within thirty (30) days. If a certified operator becomes permanently incapacitated while employed by a water~~

~~treatment plant or distribution system, the employer shall notify the division.]~~

(2) Duration and renewal of certificates.

(a) Certificates for all certified operator classes, except the limited classification as identified in Section 6(5) [(4)] of this administrative regulation, shall be issued with a common expiration date of June 30 of even-numbered years, and shall remain valid until that date [valid for up to two (2) years after each renewal], unless suspended or revoked for cause. Certificates issued between January 1 and June 30 of an even-numbered year will be issued to include the next two (2) year renewal period. [or replaced by one of a higher and similar classification.]

(b) Certificates shall expire on June 30 of even-numbered years if not renewed. Operators with expired certificates shall not be in responsible charge of a public water system.

(c) Renewals. Certificates may be renewed without examination, if the certified operator is in good standing; upon completion of the required, board-approved continuing education hours outlined in subsection (7) of this section and upon submittal of a complete renewal application and applicable fees specified in 401 KAR 8:050, Section 3. Operators desiring renewal shall apply on a form provided by the cabinet and incorporated by reference in Section 9 of this administrative regulation by June 30 of even-numbered years. Expired certificates shall continue in force pending administrative processing of a renewal, if the certified operator is in good standing and has complied with all the renewal requirements of this subsection and subsection (7) of this section by June 30 of the renewal year. Certificates continued under this paragraph remain fully effective and enforceable.

(d) ~~[(b)]~~ Limited certificates shall expire on June 30 of each year. The cabinet may renew the limited certificate upon receipt of the renewal application if the certified operator has complied with all requirements for proper operation of the facility under his responsible charge and has submitted a written application and applicable fees specified in 401 KAR 8:050, Section 3.

(3) Certification for a higher classification. Certified operators who desire to become certified in a higher classification shall satisfactorily complete the requirements of Sections 3 and 8 of this administrative regulation for the higher classification ~~[before submitting a new application. Experience earned under a limited certificate shall not count toward fulfillment of qualifications for other classifications].~~

(4) Certificates shall be valid only while the holder uses reasonable care, judgment, and application of his knowledge in the performance of his duties. Certificates shall not be issued or valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) Termination of a certificate.

(a) If a certified operator fails to renew his certificate, the certificate shall terminate one (1) year after its expiration date [after two (2) consecutive renewal periods]. Limited certificates shall terminate on December 31 of the renewal year [immediately after the expiration date] if they are not renewed. Once a certificate has terminated, an operator shall apply, pay applicable fees and pass an examination in the classification for which he is qualified to be certified.

(b) Operators holding a certificate with an expiration date of June 30, 1994, on the effective date of this emergency administrative regulation may renew the certificate by fulfilling the renewal requirements specified in subsections (2)(c) and (7) of this section for each renewal period by June 30, 1997.

(6) Reciprocity. Certificates may be issued in a comparable classification, without examination, to a person who holds a valid certificate in a state, territory, or possession of the United States, or a country, if:

(a) The applicant filed a complete application as required in Section 3(1) of this administrative regulation;

(b) The certificate was earned by passing an examination in the

reciprocal state:

(c) ~~The requirements for certification [of operators] under which the [person's] certificate was issued are no less stringent than the provisions of KRS Chapters 223 and [KRS Chapter] 224 and this administrative regulation; and~~

(d) Reciprocal privileges are granted to certified operators of the commonwealth.

(7) Training requirements.

(a) Certified operators shall accumulate continuing education credits approved by the cabinet or board, prior to applying for certificate renewal.

~~[1. This subparagraph shall apply to operators whose certification expires on or before June 30, 1992. Class I operators shall complete six (6) hours of training for renewal. Class II, III, and IV operators shall complete twelve (12) hours of appropriate cabinet approved training for certificate renewal. Such training may include, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. Training hours accumulated in excess of the minimum number required for renewal may be carried forward for two (2) years. No training is required for operators with limited certificates.~~

~~2. This subparagraph shall apply to operators whose certification expires after June 30, 1992. Class I and II certified operators shall complete twelve (12) hours of training during each two (2) year renewal period for certificate renewal. Class III and IV certified operators shall complete twenty-four (24) hours of training during each two (2) year renewal period for certificate renewal. Training includes, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. [Training hours accumulated in excess of the minimum number required for renewal may be carried forward for two (2) years from the date earned. No] Training is suggested but not required for operators with limited certificates.~~

~~(b) [The board may waive any of the requirements of paragraph (a) of this subsection for all or portions of a class of operators, as identified in Section 7 of this administrative regulation.~~

~~(c) 1. This subparagraph shall apply to operators whose certification expires on or before June 30, 1992. Operators holding both treatment and distribution certificates shall be required to complete eighteen (18) hours of training for recertification in lieu of the requirements of subsection (7)(a)1 of this section.~~

~~2. This subparagraph shall apply to operators whose certification expires after June 30, 1992. Certified operators holding [with] separate [Class I and II] treatment and distribution certificates shall complete the [twelve (12) hours of] training for recertification required for only the highest certificate in lieu of the continuing education requirements specified for both certificates in paragraph (a) [of subsection (7)(a)2] of this subsection. [Certified operators holding separate Class III or IV treatment and distribution certificates shall complete twenty-four (24) hours of training for recertification in lieu of the continuing education requirements of subsection (7)(a)2 of this section.]~~

(c) Certified operators shall keep their own records of approved training, education, and work experience and shall be prepared to present the records if requested by the cabinet.

(d) Certified operators who teach board-approved training courses may receive, upon approval of the board, hour-for-hour credit for actual instruction time.

(e) The criteria for determining whether to approve training, other than the training provided by the cabinet, are:

1. The ability of the course to provide information that will enhance the proper operation and maintenance of water treatment and distribution systems; and

2. The ability of the instructor to properly present the information.

3. In making its determination regarding approval of training courses, the cabinet and board shall require that the following information be submitted for review: the course name; the date,

location and a timed agenda for the course; the credit hours being requested; a summary of the course content of sufficient detail to determine relevance and quality of the course; and the name and credentials of each instructor for the course.

4. The board or cabinet may attend and evaluate, or cause to be evaluated, all board-approved courses.

(f) All course administrators who provide board-approved training shall maintain records on each board-approved course conducted and shall submit the information in the records to the cabinet within thirty (30) days of the conclusion of the course. The information shall include, but not be limited to:

1. The course name;

2. The course number assigned by the cabinet;

3. The class date and location;

4. The name, certificate type and number, and hours attended by each operator; and

5. The course administrator's signature.

Section 5. Disciplinary Action. (1) A certified operator shall be subject to a disciplinary action identified in this section if the cabinet, in consultation with the board according to this section, determines that the individual [certified operator] has:

(a) Willfully or negligently violated or caused a violation of this administrative regulation;

(b) Submitted false or misleading information on any document provided to the cabinet, including applications for certification or renewal;

(c) Cheated on an examination, or violated confidentiality of examination questions;

(d) Used fraud or deception in the course of employment as an operator;

(e) Failed to use reasonable care or judgment in the course of employment as an operator, failed to apply knowledge or ability in the performance of duties, was incompetent in the performance of duties, or was unable to properly perform duties;

(f) Willfully or negligently caused or violated the requirements of KRS Chapters 223 or 224 or 401 KAR Chapter 8; or

(g) Willfully or negligently falsified or failed to maintain or submit, records required by 401 KAR Chapter 8, [practiced fraud or deception in obtaining certification or filing cabinet mandated reports; has not used reasonable care or judgment in the performance of duties; has failed to apply knowledge in the performance of duties; or is incompetent, unable or unwilling to properly perform duties.]

(2) ~~(4)~~ Sanctions. The disciplinary action shall be determined by the cabinet in accordance with the review procedures in subsection (3) ~~(2)~~ of this section, and may take the form of the following sanctions according to subsection (4) ~~(3)~~ of this section, depending on the severity, duration, and number of the violations. The sanctions may include, but are not limited to:

(a) Probation for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certificate for a specified period of time, not to exceed one (1) year, during which the certificate shall be considered void;

(c) Temporary or permanent revocation of the operator's certification (temporary revocations shall not be less than one (1) year or more than four (4) years in duration); or

(d) Civil or criminal penalties against the operator.

(3) ~~(2)~~ Initial review procedures. Written complaints received by the board or cabinet on a certified operator, unless duplicitous or frivolous, shall be reviewed at the next regularly scheduled board meeting. If the charges warrant further investigation, the certified operator may be advised to appear before the board to discuss the charges levied. Upon completion of the review, the board shall make a recommendation to the cabinet regarding the operator's certification status. The board may recommend that no action be taken or that the cabinet impose a sanction identified in subsection (2) ~~(4)~~ of this

section, or any other action.

(4) ~~{(3)}~~ Cabinet action. The cabinet shall review the evidence presented and the board's recommendations. Upon completion of the review, the cabinet will initiate the recommended action or notify the board as to why an alternative action was taken. The certified operator and his employer shall be advised by certified mail of the action, the reasons outlined for the action, and the length of time for which the sanction shall apply. A certified operator whose certificate has been suspended or revoked shall not perform responsible charge operator duties during the period that the disciplinary action remains in effect. If a certification is permanently revoked, the operator shall be ineligible for future certification as a water treatment plant or distribution system operator. Experience gained during a suspension or temporary or permanent revocation shall not be included toward meeting the requirements of Section 8 of this administrative regulation. An action taken by the cabinet pursuant to this administrative regulation shall not preclude the cabinet from pursuing additional civil or criminal action.

(5) ~~{(4)}~~ Sanction review and removal. During the operator's probation, suspension, or temporary revocation, the board and cabinet will monitor the operator's work activities. At the end of the sanction period, the board will recommend to the cabinet whether the sanction should be lifted or whether additional action is necessary against the certified operator.

(6) ~~{(5)}~~ Appeal procedures. An operator who considers himself aggrieved by the disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

Section 6. Classification of Water Treatment Plants and Water Distribution Systems. The classification system is structured with four (4) classes of water treatment plants, Class I, II, III, or IV, which includes two (2) subclasses of treatment types, A or B, and four (4) classes of water distribution systems, Class I, II, III, or IV. Class IV is the highest class and subclass A is the highest subclass. Combined treatment and distribution classifications also exist for Class I and II systems: Class IA-D, IB-D, and IIB-D. The class structure relates to and corresponds with the operator classifications outlined in Section 7 of this administrative regulation. Operators with separate treatment and distribution certifications may supervise a facility with a combined classification if the certificates are equal to or higher than the system classification.

(1) Public water system classifications [Classification. Classification] shall be established in accordance with the classes listed in subsections (2) and (3) of this section. However, the cabinet may make changes in classifications in accordance with needs created by particular complexities of a public water system by reason of special features of design, or by reason of a source of supply that has characteristics that may make operation more difficult than normal, or a combination of these conditions. Due notice of a change shall be given to the owner of the public water system.

(2) Water treatment plants or systems shall be classified as one (1) of four (4) classes, based on the cabinet-assigned design capacity for finished water production that the treatment plant is able to produce in twenty-four (24) continuous hours of production, taking all limiting factors into consideration, and the treatment process employed. Public water systems with more than one (1) treatment plant shall have each treatment plant classified in accordance with this section, and each plant shall be operated in accordance with Section 1 of this administrative regulation.

(a) The treatment plant classifications and designated capacities shall be:

1. Class I: All treatment plants which have an assigned design capacity of less than 50,000 gallons of water per day;

2. Class II: All treatment plants which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day;

3. Class III: All treatment plants which have an assigned design

capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons per day; and

4. Class IV: All treatment plants which have an assigned design capacity of 3,000,000 or more gallons of water per day.

(b) Each class shall be subdivided according to the type of treatment used by the plant. The subclasses shall be:

1. A: Water treatment plants which use gravity filtration, except slow sand filtration as described in 401 KAR 8:150, as a part of their treatment scheme; and

2. B: Water treatment plants which use treatment processes other than gravity filtration. This includes the use of slow sand filtration as described in 401 KAR 8:150 for Class I and II water treatment plants.

(c) Combination treatment and distribution system classifications. Class IA-D, IB-D, and IIB-D systems shall be classified as combined treatment and distribution systems.

(3) Water treatment plant or system classifications.

(a) Class I.

1. Class IA-D. Systems which have an assigned design capacity of less than 50,000 gallons of water per day using gravity filtration, except for slow sand filtration, as a part of their treatment scheme and are responsible for the distribution of treated water. [Plants using only physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population less than 500.]

2. Class IB-D. Systems which have an assigned design capacity of less than 50,000 gallons of water per day using slow sand filtration or treatment processes other than gravity filtration, and are responsible for distribution of treated water. [Plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population less than 500.]

(b) Class II:

1. Class IIA. Plants which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme. [using physical and chemical treatment, including disinfection, and serving a population less than 3,000.]

2. Class IIB-D. Systems which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day using slow sand filtration or treatment processes other than gravity filtration, and are responsible for the distribution of treated water. [Plants using only physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population equal to or greater than 500 but less than 3,000.]

3. Class IIC-D. Plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population equal to or greater than 500 but less than 3,000.]

(c) Class III:

1. Class IIIA. Plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons of water per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme. [using physical and chemical treatment, including disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.]

2. Class IIIB. Plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons of water per day using treatment processes other than gravity filtration. [using only physical treatment and disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.]

3. Class IIIC. Plants using only disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.]

(d) Class IV.

1. Class IVA. Plants which have an assigned design capacity of 3,000,000 or more gallons of water per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme.

2. Class IVB. Plants which have an assigned design capacity of 3,000,000 or more gallons of water per day using treatment processes other than gravity filtration. ~~(serving a population equal to or greater than 15,000.)~~

(4) ~~(3)~~ Water distribution systems. Populations shall be determined as specified in 401 KAR 8:200.

(a) Class ID. Distribution systems serving a population less than 1,500.

(b) Class IID. Distribution systems serving a population equal to or greater than 1,500 and less than 15,000.

(c) Class IIID. Distribution systems serving a population equal to or greater than 15,000 and less than 50,000.

(d) Class IVD. Distribution systems serving a population equal to or greater than 50,000.

(5) ~~(4)~~ Limited. A limited classification is available to water treatment facilities for schools and semipublic water systems.

(6) ~~(5)~~ Special. Special designations may be added to any certificate if necessary to show competency of the operator for a parameter of treatment or operation not covered by the basic requirements for standard classification set forth in this section.

Section 7. Classification of Water Treatment Plant and Water Distribution System Operators. Thirteen (13) subclasses ~~Nine (9) classes~~ of certified operators are established and designated as Class I through Class IV for water treatment, Class I through Class IV for distribution, and limited. Each operator classification, except for limited, relates directly to the corresponding classification of water treatment plant or water distribution system outlined in Section 6 of this administrative regulation.

Section 8. Operator Qualifications: Experience, Education and Equivalencies. (1) Requirements. Applicants shall be examined by the cabinet regarding education, experience, and knowledge, as related to the classification of water treatment plants or water distribution systems for which the application applies. Applicants shall pass the required written examination unless granted a waiver to take an oral examination in accordance with Section 3(2) of this administrative regulation.

(2) Classification of water treatment plant operators. Operators shall comply with the experience and educational requirements of this subsection prior to applying for certification.

(a) Class IA-D ~~and Class IB-D~~:

1. Completion of high school or general education development (GED) efficiency; and

2. One (1) year of acceptable operation of a Class IA-D or higher public water system.

(b) Class IB-D:

1. Completion of high school or GED efficiency; and

2. One (1) year of acceptable operation of a Class IB-D or higher public water system.

(c) Class IIA:

1. Completion of high school or GED efficiency; and

2. Two (2) years of acceptable operation of a public water treatment plant [system], with six (6) months of that experience in a Class IIA, IIIA or IVA treatment plant.

(d) ~~(e)~~ Class IIB-D ~~and Class IIC-D~~:

1. Completion of high school or GED efficiency; and

2. ~~[For Class IIB-D,]~~ Two (2) years of acceptable operation of a public water system, with six (6) months of that experience in a Class IA-D [IIA], IIB-D, or higher [IIIA, IIIB, or IVA] treatment system. [plant, or

3. For Class IIC-D, two (2) years of acceptable operation of a public water system with six (6) months in a Class II, III or IV water treatment plant.]

(e) ~~(d)~~ Class IIIA:

1. Completion of high school or GED efficiency; and

2. Three (3) years of acceptable operation of a public water

treatment plant ~~[system]~~ with one (1) year in a Class IIA, IIIA, or IVA water treatment plant.

(f) ~~(e)~~ Class IIIB:

1. Completion of high school or GED efficiency; and

2. Three (3) years of acceptable operation of a public water treatment plant [system] with one (1) year in a Class IIA, IIB-D, IIIA, IIIB, ~~(or)~~ IVA, or IVB water treatment plant.

~~(f)~~ Class IIIC:

1. Completion of high school or GED efficiency; and

2. Three (3) years of acceptable operation of a public water system with one (1) year in a Class II, III, or IV water treatment plant.]

(g) Class IVA:

1. A baccalaureate degree from an accredited college or university; and

2. Three (3) years of acceptable operation of a public water treatment plant [system], with two (2) years of that experience being in a Class IIIA or IVA water treatment plant.

(h) Class IVB:

1. A baccalaureate degree from an accredited college or university; and

2. Three (3) years of acceptable operation of a public water treatment plant, with two (2) years of that experience being in a Class IIIA, IIIB, IVA, or IVB water treatment plant.

(i) Limited: An operator of a water treatment facility for a school or for a semipublic water supply shall be entitled to apply for a limited certificate of competency for his particular facility, if he has demonstrated to the cabinet that he has the knowledge and experience required to properly operate the particular water treatment facility for which he is responsible.

(3) Classification of water distribution system operators. Operators shall comply with the experience and educational requirements of this subsection prior to applying for certification.

(a) Class ID:

1. Completion of high school or GED efficiency; and

2. One (1) year of acceptable operation of a distribution system.

(b) Class IID:

1. Completion of high school or GED efficiency; and

2. Two (2) years of acceptable operation of a distribution system with six (6) months in a Class IID, IIID or IVD distribution system.

(c) Class IIID:

1. Completion of high school or GED efficiency; and

2. Three (3) years of acceptable operation of a distribution system, with one (1) year of that experience in a Class IID, IIID or IVD distribution system.

(d) Class IVD:

1. A baccalaureate degree from an accredited college or university; and

2. Three (3) years of acceptable operation of a distribution system, with one (1) year of that experience being in a Class IIID or IVD distribution system.

(4) Substitutions.

(a) If applicable, education may be substituted for a portion of the required experience, as specified below:

1. No substitution for Class I.

2. Successful completion of one (1) year of college work ~~[[limited to curricula in environmental engineering, environmental technology or related scientific fields]]~~ may be considered as equivalent to one (1) year of experience, limited to one (1) year for Class II, two (2) years for Class III, and two (2) years for Class IV.

3. Education applied to the experience requirement shall not be applied to the educational requirement or used as continuing education hours toward certification renewal.

(b) If applicable, the cabinet may authorize experience to be substituted for education requirements as specified below:

1. One (1) year experience in active operation of a water system at a Class II level or above shall be considered equivalent to one (1) year of college. Four (4) years of experience may be substituted for

the requirement of a college degree by a high school graduate or recipient of a GED.

2. One (1) year of board-approved experience may be considered equivalent to one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school diploma or a GED, subject to the approval of the board. Operators requesting this substitution shall submit a written request to the cabinet and may be requested to appear before the board.

3. Experience applied to education requirements shall not be applied to the experience requirement.

(c) Substitutions of related experience for treatment plant and distribution experience.

1. Experience gained in distribution system operation may be credited toward fulfillment of the treatment plant experience requirement as follows: two (2) years of distribution experience [~~in a related field~~] may be considered equivalent to one (1) year of treatment experience.

2. Experience gained in drinking water treatment plant operation may be credited toward fulfillment of the distribution system experience requirements as follows: one (1) year of drinking water treatment experience [~~in a related field~~] may be considered equivalent to one (1) year of distribution experience.

3. Partial credit, as determined by the board, may be given for operating experience in maintenance, laboratories, other work of drinking water treatment or distribution systems and allied trades.

(d) Substitutions for formal education may be as follows: Training earned at [~~credits for~~] board-approved operator training schools, seminars and technical courses may be substituted for high school and college requirements upon approval of the board. One (1) year of college work shall equal thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board-approved courses shall equal one (1) training credit, and forty-five (45) training credits shall equal eighteen (18) semester hours of college or one (1) year of high school. One (1) continuing education unit (CEU) shall equal ten (10) classroom [~~training credit~~] hours.

Section 9. Documents Incorporated by Reference. The following documents are incorporated by reference and are available for public inspection and copying, subject to the copyright laws, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) "Drinking Water or Wastewater Operator Certification Application", "DEP 6047 (8/96)", available from the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, Frankfort, Kentucky [~~January 1992~~].

(2) "Application for Certificate Renewal," "DEP 6007 (8/96)", available from the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, Frankfort, Kentucky [~~January 1992~~].

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 4, 1996

FILED WITH LRC: October 7, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes the program for the certification of water treatment plant and water distribution system operators. The regulation is being amended under an emergency regulation primarily to change the basis for the classification of water treatment plants and to allow facilities an extension of time to meet staffing requirements if certain conditions are met. The amendments to this regulation will affect approximately 770 public water systems, and 3,029 certified operators of those public water systems. This amendment will also

affect all future applicants for certification. Approximately 300 new applicants test for drinking water treatment or distribution certifications annually.

(2) Direct and indirect costs or savings on the affected entities: The most significant revision to this regulation changes the classification of public water treatment plants from a population/treatment techniques based system to one based on the treatment plant's design capacity and treatment techniques employed. Every effort has been made to avoid disruption of the current classification system, however, some facility classifications may change. Of the 770 public water systems, approximately 104 systems will be reclassified to a lower level and 57 systems will receive a higher classification. Those receiving a higher classification may request approval of a provisional staffing plan which will allow up to a two year extension for securing a properly certified staff.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Although this is an emergency regulation and no formal hearing has occurred yet, the cabinet requested input from various impacted groups during the development of this regulation, including representatives of the Rural Water Association, Kentucky Water and Wastewater Operators Association, Kentucky Board of Certification of Drinking Water Treatment and Distribution System Operators, Kentucky Board of Wastewater System Operators, American Water Works Association, and Kentucky League of Cities. This regulation is implemented statewide. The regulation currently specifies certified operator staffing levels for each class of water treatment plant and distribution system. The changes proposed actually relax the staffing requirements for certain facility classes. Since certified operators command higher wages due to education and operational experience within a drinking water or wastewater system, the changes imposed could result in a net reduction in the number of operators required.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public comment has been solicited from several impacted groups, however, this is an emergency regulation and no formal hearing has occurred yet. (See also (2)(a).) If a system does not currently employ a staff sufficient to meet the regulatory staffing requirements, additional certified staff will need to be hired. This will increase the operation and maintenance costs of the facility. This should not be an unanticipated cost, however, due to the current regulatory standards for staffing and the assumption that treatment facilities cannot operate "automatically." The changes relax the existing staffing requirements for certain facility classes. Taking into consideration the classification changes identified in this regulation, the required number of operators will decrease by approximately 41. Assuming a statewide annual salary of \$21,000, this amendment could potentially result in a statewide decrease of \$861,000 in the cost of doing business.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: The reporting requirements referenced below require extra time and effort on the part of public water systems but the information requested should be readily available within the system and the costs should be minimal.

1. First year following implementation: Public comment has been solicited from several impacted groups, however, this is an emergency regulation and no formal hearing has occurred. (See also (2)(a).) Public water systems are required to notify the cabinet within 30 days of certified operator employment changes. Previously, systems only had to report to the cabinet when an operator died or became permanently incapacitated. The amendments to this regulation allow facilities in violation of the on-site staffing requirements an extension to comply with the on-site staffing requirements if the systems are otherwise in compliance with the requirements of 401 KAR Chapter

8. Facilities must comply within 90 days or request approval of a provisional staffing plan. The provisional staffing plan shall demonstrate how the system will meet the staffing requirements within a two year period and protect public health and safety throughout the compliance period.

2. Second and subsequent years: Additional reporting and paperwork requirements include:

a. Training course administrators, which include public water systems, professional trainers, operator associations, etc., must submit, within 30 days of completion, a list of course attendees.

b. Public water systems which secure a contract operator must submit information to identify the certified operator in responsible charge, facilities for which he is responsible, duties assigned to all parties, and the effective date and expiration date of the contract.

(3) Effects on the promulgating administrative body: The primary change to this regulation is a revision of the classification system. This will require some computer programming changes and notification of facility class changes. Examinations utilized to test operators for certification will have to be revised to reflect the new/revised classifications. Several new facility reporting requirements are included within the regulation. Much of the information required is already being submitted but in a haphazard manner. While the cabinet will have to handle and process the information, less staff time should be expended if the reports are complete.

(a) Direct and indirect costs or savings: Minor costs and no savings are anticipated.

1. First year: The cabinet will have to review within 90 days all provisional staffing plans submitted to determine if the system is eligible and if approval of the plan can be granted. It is estimated that initially 150 systems will request this approval.

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet presently maintains a database of all applicants for certification and certified operators, conducts and documents training for each operator, and tests them for competency. Those who pass the test are issued a certificate and wallet card for the respective classification. These practices will continue under this regulation. As previously referenced, the changes require several new reports of the regulated community. Submittal of these reports should actually reduce the staff time spent on tracking due to the haphazard manner in which the information is currently submitted.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The cabinet uses operator fees and monies appropriated by the Kentucky General Assembly to administer this program.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Public comment has been solicited from impacted groups, however, this is an emergency regulation and no formal hearing has occurred. (See also (2)(a).) This regulation is implemented statewide. The regulation has no effect on economic activities, except to the extent that the availability of a high quality water supply facilitates economic development.

(b) Kentucky: This regulation is implemented throughout Kentucky. The regulation has no effect on economic activities, except to the extent that the availability of a high quality water supply facilitates economic development.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Various methods for the classification of public water system operators have been considered. The alternative methods considered for this amendment include: a rating system based on the

water treatment techniques utilized, a system based on population served, plant design capacity, or a combination of these. The first alternative would require the establishment of a rating system and a review of all the treatment techniques utilized by each system. The classification required would be based on information compiled by the system and/or cabinet staff. This alternative is more detailed than the present system and can easily prompt class changes and inconsistencies so it was rejected as overly costly and disruptive. The second method, which was utilized prior to implementation of the emergency regulation, was causing plant classification increases, due to simple treatment process changes and/or line extensions to serve additional customers. The third focuses primarily on the design capacity of the plant and whether the water is filtered as part of the treatment process. Conversion to a design capacity based system allows the cabinet to advise the system during the plans review of the type and number of operators required for the facility. Use of the design capacity and only one aspect of the treatment process will prevent systems from receiving a new classification due to a water line extension and a chemical change within the treatment process. This method was selected to alleviate sudden facility class changes and allow classification changes to be identified during the facility planning stage.

(8) Assessment of expected benefits of the administrative regulation: Training and testing operators helps assure a high quality of drinking water for customers of public water systems and protects public health. Certified operators can also extend the life of the water system through proper operation and maintenance. The reclassification of water treatment plants from a population based system to one based on design capacity will prevent systems from suddenly being moved into a higher class due to population growth with no change in their treatment process.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: A well-trained and competent group of public water system operators helps assure public water system consumers of a high quality, healthful product. Sound infrastructure is also necessary to support economic development initiatives. Public water systems which are not operated properly can result in numerous problems for the consumers of water. These can range from the discoloration of clothes washed in improperly treated water, to gastrointestinal illness, and in extreme cases, death. Inexperienced operators can also operate a facility in a manner which increases the day-to-day cost of operation (i.e., electrical and chemical costs) and/or reduce the life of the facility.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No, not directly as a result of implementing this regulation, although improperly treated water affects the public's health, see above.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? Yes, tiering is applied. Different operator classifications require varying levels of training and experience for certification. Also, the plant classifications are tiered to reflect the design capacity of the treatment plant, the complexity of the treatment process, and the water source. The facility classification also establishes the operator coverage required taking into consideration the number of hours drinking water is treated. Depending on storage capacity, a higher class facility may be required to employ more operators than a smaller system to maintain coverage.

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 regulation affects public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems. It requires such systems to have their water treatment plant and/or distribution system operated by properly certified operators.

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. The amendments to this regulation are intended to clarify the requirements and streamline the process by which operators are certified into a higher classification of system. Public water systems are currently required to employ certified operators. Systems which are not in compliance with the regulatory staffing requirement will incur the cost of testing and/or hiring a properly certified operator(s). The costs incurred will depend on many factors including the geographic area of the state in which the facility is located, facility classification, and hours of water treatment. As an example of a worst-case scenario, Class IIIA and IVA water treatment plants which represent the largest, full chemical treatment plants, are required to have a properly certified operator on-site when water is being treated. Assuming that a system does not have any properly certified operators and treats water 24 hours per day, seven days a week, the system would need five operators working 40 hours to maintain shift and backup coverage. Assuming that five operators must be hired at an annual salary of \$21,000, the base cost to a local government would be \$105,000. Class IIA facilities require operator coverage of the daytime shift which requires two operators at a cost of \$42,000 if water is treated seven days a week. Class IA-D, IB-D, IIB-D, IIIB, and IVB systems which serve smaller populations and/or physically treat the water require an operator to be in responsible charge of the system but not necessarily on-site, all day, everyday. This allows for a part-time operator as long as water quality standards of 401 KAR Chapter 8 are maintained. The impact on Class II or higher systems could be alleviated by the amendments which allow for qualified systems to use a provisional staffing plan (see below). It should be noted, however, that the overall effect of the classification changes will result in the need for 41 fewer certified operators.

Revenues (+/-): None

Expenditures (+/-): Public water systems are already required to have properly certified operators. If the system does not have sufficient staff or will be changed to a higher classification, additional operators may need to be certified and/or employed. The regulation allows for approval of a provisional staffing plan, however, which will allow facilities which are currently in compliance with drinking water standards up to two years for securing the appropriate staff.

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Safe Drinking Water Act Amendments of 1996, enacted August 6, 1996 (Pub. L. 104-182), include a provision for the certification of operators of public water systems. The regulations to implement this section are required no later than 30 months after enactment of the law. Therefore, although there is a federal statute (42 USC 300g-8), presently there is no federal regulation relating to the certification of operators.

2. State compliance standards. N/A

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATEMENT OF EMERGENCY
502 KAR 45:055E

This administrative regulation amendment is necessitated in order to bring it into harmony with all other administrative regulations that govern the application process. This amendment provides for this and an emergency exists as the selection process will culminate with conditional offers of employment being made as soon as December 1, 1996. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor
GARY W. ROSE, Commissioner

JUSTICE CABINET
Department of State Police

502 KAR 45:055E. Oral interview.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

EFFECTIVE: October 15, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes the oral interview component of the examination.

Section 1. (1) An appropriate number of applicants who have completed the CBTT shall be eligible to participate in the oral interview component of the selection process. Oral interviews shall be conducted by oral interview panels appointed by the commissioner, who shall determine the number of applicants to be interviewed. The commissioner shall determine the number of applicants to be interviewed based upon the number of available vacant funded positions and the projected attrition rates as candidates advance through the selection process. Applicants shall be selected for interviews in rank order as determined by their combined scores on the written examination and the CBTT. The commissioner may deviate from the rank order of score only when necessary to correct a manifest imbalance in the representation of minorities or women in the pool of qualified applicants, and there exists a manifest imbalance of minorities or women in the department.

(2) Each oral interview panel shall consist of three (3) members, at least one (1) of whom shall be a female or a member of a minority group, and at least one (1) of which shall be a sworn officer. To ensure fairness and consistency, panel members shall receive training related to interview methodology and equal employment opportunity law.

(3) Members of the oral interview panels shall disclose each instance in which they are personally acquainted with an applicant to be interviewed or with any member of the applicant's immediate family, and that applicant shall be interviewed by another panel.

Section 2. (1) Each interview shall be structured so that all applicants are asked the same initial questions and rated in the same manner, although panel members may ask supplementary questions

if they deem it necessary.

(2) Each applicant interviewed shall be scored in each of five (5) categories by each panel member. The categories shall be:

- (a) Maturity, emotional stability and ego strength;
- (b) Conscientiousness and persistence;
- (c) Social boldness and venturesomeness;
- (d) Self-assuredness; and
- (e) Self-discipline.

For each category, the applicant shall be scored on a range from zero to six (6), with six (6) being the highest score and zero being the lowest score.

(3) The oral interview score shall constitute sixty (60) ~~forty (40)~~ percent of the overall score. As soon as practicable after the oral interview, each applicant shall be advised of his score and ranking, and may be requested to inform the department in writing as to whether the applicant wishes to continue to participate in the selection process by consenting to a background investigation.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: October 2, 1996

FILED WITH LRC: October 15, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None seen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will be created by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were proposed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicative:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

STATEMENT OF EMERGENCY

787 KAR 1:320E

Under KRS Chapter 13A, the administrative body is required to implement this administrative regulation in order to have sufficient authority for the prioritizing of deductions from unemployment benefit payments. Section 702(b) of PL 103-465 amended federal law to require state law to provide for the voluntary withholding of federal income tax from unemployment compensation. Specifically, new paragraph (18) of Section 3304(a) of the Federal Unemployment Tax Act was added to require, as a condition for employers in a state to receive credit against the federal unemployment tax, that: "Federal individual income tax from unemployment compensation is to be deducted and withheld if an individual receiving such compensation voluntarily requests such deduction and withholding." This administrative regulation establishes the priority of deductions from unemployment benefits if deductions and withholding from benefit payments are required under more than one (1) statute or for more than one (1) purpose and must be instituted prior to implementation of voluntary withholding January 1, 1997. These time constraints necessitate the promulgation of an emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 787 KAR 1:320 will be filed with the Regulations Compiler by October 15, 1996.

PAUL E. PATTON, Governor

RODNEY S. CAIN, Secretary

WORKFORCE DEVELOPMENT CABINET

Department for Employment Services

Division of Unemployment Insurance

787 KAR 1:320E. Priority of deductions from benefits.

RELATES TO: KRS 341.391

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: October 3, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.391(4) provides that amounts shall be deducted and withheld from benefit payments in accordance with priorities established in administrative regulation by the secretary. This administrative regulation establishes the priority of deductions from benefits.

Section 1. If deductions and withholding from benefit payments are required under more than one (1) statute or for more than one (1) purpose, the priority for deduction shall be as follows:

(1) Deduction of wages, remuneration in lieu of notice and pension compensation as required under KRS 341.390.

(2) Deduction for recoupment of a previous overpayment as

required under KRS 341.415.

(3) Child support obligations as required under KRS 341.392.

(4) Any other mandatory deduction imposed under any federal or Kentucky statute or administrative regulation.

(5) Voluntary withholding of income tax requested by a claimant as provided under KRS 341.391.

RODNEY S. CAIN, Secretary

RHONDA K. RICHARDSON, Commissioner

APPROVED BY AGENCY: October 1, 1996

FILED WITH LRC: October 3, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Potentially, all unemployment insurance claimants should all choose to have income tax deducted.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Reduces claimant need to make estimated federal income tax payments.

2. Second and subsequent years: Reduces claimant need to make estimated federal income tax payments.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None resulting from this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Claimants electing income tax withholding will be furnished an accounting of the amount withheld.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: U.S. Department of labor administrative funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Not applicable.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity or proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied as

federal law requires that mandatory deductions consistently take precedence over voluntary income tax deductions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 3304(a)(18), Federal Unemployment Tax Act (FUTA).

2. State compliance standards. This administrative regulation establishes the priority of deductions from unemployment benefits if deductions and withholding from benefit payments are required under more than one statute or for more than one purpose. The priority of such deductions shall be as follows: (1) deduction of wages, remuneration in lieu of notice and pension compensation as required under KRS 341.390; (2) deduction for recoupment of a previous overpayment as required under KRS 341.415; (3) child support obligations as required under KRS 341.392; (4) any other mandatory deduction imposed under any federal or Kentucky statute or administrative regulation; and, (5) voluntary withholding of income tax requested by a claimant as provided under KRS 341.391.

3. Minimum or uniform standards contained in the federal mandate. Section 702(b) of PL 103-465 amended federal law to require state law to provide for the voluntary withholding of federal income tax from unemployment compensation. New paragraph (18) of Section 3304(a), Federal Unemployment Tax Act (FUTA) was added to require that "federal individual income tax is to be deducted and withheld from unemployment compensation if an individual receiving such compensation voluntarily requests such deduction and withholding."

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.

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? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

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:

STATEMENT OF EMERGENCY

803 KAR 25:036E

This emergency administrative regulation adopts a life expectancy table for use in workers' compensation cases. Pursuant to an amendment to KRS 342.260 enacted by the 1996 regular session of the Kentucky General Assembly, the Commissioner of the Department of Workers' Claims is required to adopt life expectancy tables published by the U. S. Department of Health and Human Services or other life tables developed by a qualified entity, as determined by the commissioner. It has been determined that an emergency exists that requires immediate action to prevent a threat to the public welfare. This emergency administrative regulation is necessary to provide immediate uniformity in workers' compensation cases in the computa-

| | | | | |
|--|------|------|------|------|
| tion of benefits. According to actuarial examiners the Special Fund | 2 | 74.5 | 71.1 | 77.8 |
| currently has an outstanding liability of 2.6 billion dollars which is | 3 | 73.5 | 70.1 | 76.8 |
| partially funded through a reserve of approximately 350 million | 4 | 72.5 | 69.1 | 75.8 |
| dollars. Under the provisions of KRS 342.120 where both the | 5 | 71.6 | 68.1 | 74.8 |
| employer and the Special Fund have liability for workers compensa- | 6 | 70.6 | 67.2 | 73.9 |
| tion benefits, the employer, or its insurance carrier, pays that liability | 7 | 69.6 | 66.2 | 72.9 |
| first and the Special Fund pays the balance of the liability, including | 8 | 68.6 | 65.2 | 71.9 |
| liability for benefits accruing after the claimant has survived the life | 9 | 67.6 | 64.2 | 70.9 |
| expectancy established by the U. S. Decennial life tables now in use | 10 | 66.6 | 63.2 | 69.9 |
| pursuant to 803 KAR 25:035(1), <u>Pickands Mather v. Newberg</u> , Ky., | 11 | 65.6 | 62.2 | 68.9 |
| 895 SW2d 3 (1995). The U. S. Decennial tables are based on old | 12 | 64.6 | 61.2 | 67.9 |
| census data and understate the projected life expectancies of injured | 13 | 63.7 | 60.3 | 66.9 |
| workers. As a consequence thereof, employers and their insurance | 14 | 62.7 | 59.3 | 65.9 |
| carriers do not pay a proper part of workers' compensation awards | 15 | 61.7 | 58.3 | 65.0 |
| while the Special Fund pays a disproportionately large part of awards. | 16 | 60.7 | 57.4 | 64.0 |
| Outdated life expectancy tables have contributed to the funding crisis | 17 | 59.8 | 56.4 | 63.0 |
| of the Special Fund which in turns threatens the economical founda- | 18 | 58.8 | 55.5 | 62.0 |
| tion of the Kentucky Department of Workers' Claims Program. This | 19 | 57.9 | 54.6 | 61.1 |
| emergency administrative regulation will be replaced by an ordinary | 20 | 56.9 | 53.7 | 60.1 |
| administrative regulation. The Notice of Intent for 803 KAR 25:036 | 21 | 56.0 | 52.7 | 59.1 |
| was filed with the regulations compiler on October 15, 1996. | 22 | 55.1 | 51.8 | 58.2 |
| | 23 | 54.1 | 50.9 | 57.2 |
| PAUL E. PATTON, Governor | 24 | 53.2 | 50.0 | 56.2 |
| WALTER W. TURNER, Commissioner | 25 | 52.2 | 49.1 | 55.2 |
| | 26 | 51.3 | 48.2 | 54.3 |
| LABOR CABINET | 27 | 50.4 | 47.2 | 53.3 |
| Department of Workers' Claims | 28 | 49.4 | 46.3 | 52.3 |
| | 29 | 48.5 | 45.4 | 51.4 |
| 803 KAR 25:036E. Computation of life expectancies for | 30 | 47.5 | 44.5 | 50.4 |
| purposes including apportionment and attorney's fees. | 31 | 46.6 | 43.6 | 49.4 |
| | 32 | 45.7 | 42.7 | 48.5 |
| RELATES TO: KRS Chapter 342 | 33 | 44.7 | 41.8 | 47.5 |
| STATUTORY AUTHORITY: KRS 342.260(2) | 34 | 43.8 | 40.9 | 46.6 |
| NECESSITY, FUNCTION, AND CONFORMITY: The purpose of | 35 | 42.9 | 40.0 | 45.6 |
| this administrative regulation is to give the administrative law judges | 36 | 42.0 | 39.1 | 44.7 |
| of the Department of Workers' Claims guidance with respect to the | 37 | 41.0 | 38.2 | 43.7 |
| computation of attorneys' fees and the apportionment of benefits | 38 | 40.1 | 37.3 | 42.8 |
| between the employers and the Special Fund, pursuant to the | 39 | 39.2 | 36.4 | 41.8 |
| commissioner's authority under KRS 342.260(2). | 40 | 38.3 | 35.5 | 40.9 |
| | 41 | 37.4 | 34.6 | 39.9 |
| Section 1. Computation of the Apportionment of Benefits Between | 42 | 36.5 | 33.7 | 39.0 |
| the Employer and the Special Fund. Whenever an administrative law | 43 | 35.6 | 32.8 | 38.0 |
| judge is required to compute the apportionment of benefits between | 44 | 34.7 | 32.0 | 37.1 |
| the employer and the Special Fund pursuant to KRS 342.120(8), the | 45 | 33.8 | 31.1 | 36.2 |
| portions shall be based on the life expectancies contained in the male | 46 | 32.9 | 30.2 | 35.3 |
| or female mortality tables in Appendix A of this administrative | 47 | 32.0 | 29.4 | 34.3 |
| regulation. If a claim is reopened the table in effect on the date of the | 48 | 31.1 | 28.5 | 33.4 |
| original opinion, award or order approving the settlement agreement | 49 | 30.2 | 27.6 | 32.5 |
| shall continue to be utilized. | 50 | 29.3 | 26.8 | 31.6 |
| | 51 | 28.5 | 25.9 | 30.7 |
| Section 2. Computation of Attorneys' Fees. Whenever an | 52 | 27.6 | 25.1 | 29.8 |
| attorney's fee is being computed by an administrative law judge | 53 | 26.8 | 24.3 | 29.0 |
| pursuant to KRS 342.320, the award on which the attorney's fee shall | 54 | 25.9 | 23.5 | 28.1 |
| be based shall be as actuarially determined on past and future | 55 | 25.1 | 22.7 | 27.2 |
| benefits according to the life expectancies contained in the male or | 56 | 24.3 | 21.9 | 26.4 |
| female mortality tables in Appendix A of this administrative regulation. | 57 | 23.5 | 21.1 | 25.5 |
| | 58 | 22.7 | 20.4 | 24.7 |
| Section 3. Other Computations. When calculation of a life | 59 | 21.9 | 19.6 | 23.9 |
| expectancy is necessary for any other purpose, including computation | 60 | 21.1 | 18.9 | 23.1 |
| of assessments or reserves for self-insured employers, the male or | 61 | 20.4 | 18.2 | 22.3 |
| female mortality tables in Appendix A shall be utilized. | 62 | 19.7 | 17.5 | 21.5 |
| | 63 | 18.9 | 16.8 | 20.7 |
| APPENDIX A | 64 | 18.2 | 16.1 | 19.9 |
| AGES BOTH SEXES MALES FEMALES | 65 | 17.5 | 15.4 | 19.2 |
| | 66 | 16.8 | 14.8 | 18.4 |
| 0 | 75.8 | 72.3 | 79.1 | 77.7 |
| 1 | 75.4 | 72.0 | 78.7 | 76.9 |

| | | | |
|----|------|------|------|
| 69 | 14.8 | 12.9 | 16.2 |
| 70 | 14.2 | 12.4 | 15.5 |
| 71 | 13.5 | 11.8 | 14.8 |
| 72 | 12.9 | 11.2 | 14.1 |
| 73 | 12.3 | 10.7 | 13.5 |
| 74 | 11.7 | 10.1 | 12.8 |
| 75 | 11.2 | 9.6 | 12.2 |
| 76 | 10.6 | 9.1 | 11.6 |
| 77 | 10.0 | 8.6 | 10.9 |
| 78 | 9.5 | 8.1 | 10.3 |
| 79 | 9.0 | 7.7 | 9.7 |
| 80 | 8.5 | 7.2 | 9.2 |
| 81 | 8.0 | 6.8 | 8.6 |
| 82 | 7.5 | 6.4 | 8.1 |
| 83 | 7.1 | 6.0 | 7.6 |
| 84 | 6.6 | 5.6 | 7.1 |
| 85 | 6.2 | 5.3 | 6.6 |

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: October 14, 1996

FILED WITH LRC: October 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: Workers' compensation claimants, employers, the Special Fund, and their attorneys. Approximately 10,000 formal Applications for Adjustment of Claims are filed with the Department of Workers' Claims each year.

(2) Direct or indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received.

(b) Cost of doing business in geographical area in which the administrative regulation will be implemented to the extent available from public comments received: No public comments have been received.

(c) Compliance reporting and paperwork requirements for the:

1. First year following implementation. No additional paperwork requirements are imposed upon the entities affected by this administrative regulation.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional cost for printing copies of the amended administrative regulation; not to exceed \$1,000.

2. Continuing costs or savings: Negligible

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No additional requirements to the agency.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of this administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented state wide, and also will affect Kentucky workers' compensation claimants who reside outside of Kentucky. No public comments have been received about any anticipated impact, but the amendments to this regulation should help to assure uniformity in the calculations made by the Special Fund and all administrative law judges.

(b) Kentucky: Same as (a), above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: KRS 342.260(2), as amended by the regular session of the 1996 Kentucky General Assembly, requires the commissioner to develop or adopt life expectancy tables for use in making computations for the apportionment of benefits, attorneys fees, and for use in all other situations arising under the Workers' Compensation Act in which the calculation of a life expectancy is necessary or desirable.

(8) Assessment of expected benefits:

(a) Identify effect on public health and environment welfare: No effect.

(b) State whether a detrimental effect would result if not implemented: No effect.

(c) Explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping or duplication: None known.

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

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Yes. The amount of Special Fund liability will depend upon the life expectancy of the claimant as well as the degree and type of injury. Attorneys' fees will be tiered based upon the amount of the award, which in total disability cases will be based in part on the life expectancy of the claimant. The calculation of reserves for self-insurers, likewise, will be tiered in accordance with the number of claims and the life expectancies of the claimants involved.

STATEMENT OF EMERGENCY

806 KAR 9:240E

This emergency administrative regulation confirms the applicability of licensure statutes and insurance consumer protections to financial institutions exercising their authority to sell insurance under the U.S. Supreme Court decision in Barnett Bank of Marion County, N.A. v. Nelson, 116 S.Ct. 1103 (1996), and the Department of Financial Institutions Parity Letter 96-2. The Department of Insurance needs this administrative regulation in place by September 20, 1996, to uniformly process agent applications by financial institutions and to ensure the protection of the insurance consumer due to the unique relationship of the financial institution insurance agent. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be filed at a later date.

PAUL E. PATTON, Governor

LAURA M. DOUGLAS, Secretary

GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

806 KAR 9:240E. Financial institutions licensed as noncredit related insurance agents.

RELATES TO: KRS 304.9-080, 304.9-130, 304.12-140, 304.12-150, 304.12-160, 304.12-170

STATUTORY AUTHORITY: KRS 304.2-110

EFFECTIVE: September 20, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation confirms the applicability of licensure statutes and insurance consumer protections to financial institutions exercising their authority to sell insurance under the U.S. Supreme

Court decision in Barnett Bank of Marion County, N.A v. Nelson, 116 S.Ct. 1103 (1996), and the Department of Financial Institutions Parity Letter 96-2.

Section 1. Definitions. (1) "Financial institution" means a bank holding company, as defined in the Bank Holding Company Act of 1956, as amended, 12 USC sec. 1841, a bank, savings bank, savings and loan association, trust company, or any depository institution as defined by the Federal Deposit Insurance Act, in 12 USC sec. 1813(c)(1), any affiliate or subsidiary of any of the above, and any other individual, corporation, partnership, or association authorized to take deposits and make loans in the Commonwealth, including state banks exercising their authority under the Department of Financial Institutions Parity Letter 96-2; and

(2) "Insurance agency activities" means any activity relating to insurance other than credit life insurance, credit health insurance, or insurance of the interest of a real property mortgagee in mortgaged property, other than title insurance, for which a license as agent, solicitor, broker, or consultant is required pursuant to KRS Chapter 304.

(3) "Insurance information" means any information provided by a consumer in order to obtain insurance.

Section 2. All financial institutions located and doing business in a town the population of which does not exceed 5,000 inhabitants, as shown by the last preceding decennial census, its subsidiaries, or any officer, agent, representative, or employee thereof, may exercise its authority under 12 USC sec. 92 and be licensed to act as agent for any fire, life or other insurance company authorized pursuant to this chapter to engage in the business of insurance in the Commonwealth if:

(1) The financial institution or officer, agent, representative or employee thereof otherwise qualifies for licensure under all applicable provisions of KRS Chapter 304; and

(2) The licensee abides by all applicable provisions of KRS Chapter 304 and applicable administrative regulations.

Section 3. Notice of Free Choice of Agent or Insurer. A financial institution shall provide a written statement, signed or initialed by the consumer, to evidence compliance with KRS 304.12-150.

Section 4. Insurance Information. If the consumer voluntarily discloses or authorizes in a written statement, signed or initialed by the consumer, the disclosure of insurance information about the consumer to any person, the statement shall be an acknowledgment that the disclosure is not to the detriment of the consumer.

Section 5. Tying Arrangements Prohibited. (1) A financial institution licensed by the Department of Insurance to engage in insurance agency activities shall not in any manner issue insurance, extend credit, lease or sell property of any kind or furnish any service or fix or vary the consideration for any of the foregoing, on the condition or requirement:

(a) That the consumer shall obtain some additional insurance, credit, property, or service from the financial institution other than a loan, discount, deposit or trust service;

(b) That the consumer shall obtain some additional insurance, credit, property, or service from the financial institution, bank holding company of the financial institution, or any subsidiary of the bank holding company;

(c) That the consumer provide some additional insurance, credit, property, or service to the financial institution, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(d) That the consumer provide some additional insurance, credit, property, or service to a bank holding company of the financial institution, or to any other subsidiary of the bank holding company; or

(e) That the consumer shall not obtain some other insurance, credit, property, or service from a competitor of the financial institution, bank holding company of the financial institution, or any subsidiary of the bank holding company, other than a condition or requirement that the bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

(2) A financial institution licensed by the Department of Insurance to engage in insurance agency activities shall notify the department in writing within ten (10) days of any final judgment or of any final administrative action by a federal agency authorized to enforce the anti-tying provisions which finds that the financial institution or any of its employees committed any the violation. Any the final judgment or final administrative action shall be deemed a violation of the Kentucky Insurance Code.

Section 6. Written Disclosures. Prior to the sale of any policy of insurance to a consumer, a financial institution shall provide to the consumer a written statement, signed or initialed by the consumer, that:

(1) The insurance offered by the financial institution is not a deposit;

(2) The insurance offered by the financial institution is not insured by the Federal Deposit Insurance Corporation or other government agency which insures deposits;

(3) The insurance offered by the financial institution is not guaranteed by the financial institution;

(4) The insurance is optional or, if required, that the insurance may be purchased from any insurance agent or insurer selected by the consumer which provides the same or equivalent coverage; and

(5) That not purchasing the insurance if it is optional, or that purchasing the insurance from another insurance agent or insurer if the insurance is required, will not in any way affect current or future credit decisions.

Section 7. Transaction Delay. An officer or employee of a financial institution shall not directly or indirectly delay or impede the completion of a loan transaction or any other transaction with a financial institution for the purpose of influencing a consumer's selection or purchase of any insurance.

Section 8. Referral fees. An employee of a financial institution may receive compensation for the referral of a consumer who seeks information about or to purchase any insurance product to a licensed person or for the provision of the telephone number of a licensed person who sells or provides information on the product only if:

(1) The employee receives the referral fee regardless of whether insurance coverage is sold;

(2) The referral compensation is a fixed amount;

(3) The referral compensation is a portion of a financial institution's program offering referral fees for other noninsurance products or services marketed by the financial institution; and

(4) The referral compensation is paid by the financial institution.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

CONTACT PERSON: Julie P. Mix, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Fax Number: (502) 564-1456.

APPROVED BY AGENCY: September 20, 1996

FILED WITH LRC: September 20, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Julie P. Mix

(1) Type and number of entities affected: The department does not know how many financial institutions will apply for a license as an

insurance agent. At this time, several have expressed interest.

(2) Direct or indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects on competition) for the:

1. First year following implementation: This administrative regulation requires the filing of an application, and examination, where applicable, by all financial institutions interested in becoming licensed as an insurance agent.

2. Second and subsequent years: The only additional information filed with regard to this administrative regulation would occur if something in the original application changed.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will have the responsibility of evaluating the applications and examinations of financial institutions. However, at this time, the department predicts the costs to be minimal since the volume of applications currently evaluated should not increase significantly. Additionally, the department will have the responsibility of evaluating consumer complaints regarding the financial institution agents. However, the increased cost is predicted to be minimal, in light of the volume of complaints presently investigated.

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: The number of applicants and complaints received.

(b) Reporting and paperwork requirements: The department will have to review all applications for licensing and consumer complaints. The department will have to send an approval or rejection of licensing and a written resolution to complainants.

(4) Assessment of anticipated effect on state and local revenues: Minuscule increase in licensure revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received at this time.

(b) Kentucky: No public comments have been received at this time.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is necessary for the Department of Insurance to license financial institutions as insurance agents.

(8) Assessment of expected benefits: The department will be able to license financial institutions as insurance agents, in accordance with the U.S. Supreme Court decision. Consumers will enjoy full protection under the Insurance Code from the unique relationship of a financial institution insurance agent.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS

287.030(4).

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Parity Letter 96-2 sets aside the statutory prohibition of state banks selling most kinds of insurance in order to give Kentucky banks the same marketing capabilities that national banks were given in Barnett Bank of Marion County, N.A. v. Nelson.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied: Tiering is not applied, because this administrative regulation will be applied equally to all financial institution applicants and agents.

STATEMENT OF EMERGENCY 902 KAR 47:080E

The administrative regulation 902 KAR 47:080E establishes requirements for training and certification for persons who perform lead hazard detection and abatement in target housing and child-occupied facilities. This administrative regulation is needed to comply with 1996 Ky. Acts ch. 168 "Lead Hazard Act", and Section 403 of the U.S. Environmental Protection Agency's (EPA) Toxic Substances Control Act (TSCA), 15 USC 2683. It is necessary to promulgate this emergency administrative regulation to comply with statutory requirements that these regulations shall be promulgated before October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Public Health

Division of Environmental Health and Community Safety

902 KAR 47:080E. Training and certification requirements for individuals who perform lead hazard detection or lead hazard abatement.

RELATES TO: KRS 211.900 through 211.905, 211.990, 211.994, 217.801

STATUTORY AUTHORITY: 211.090, 211.180, 1996 Ky. Acts ch. 168, EO 96-862

EFFECTIVE: October 1, 1996

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. 1996 Ky. Acts ch. 168 authorizes the Department for Public Health to promulgate administrative regulations relating to the training, testing requirements and procedures for certification of persons who perform or offer to perform lead hazard detection or lead hazard abatement in "target housing" or "child-occupied facilities".

Section 1. Definitions. As used in this administrative regulation:

(1) "Accredited training program" means a training program that has been accredited by the Department for Public Health to provide training for individuals engaged in lead hazard detection and abatement activities.

(2) "Certificate" means a document issued by the Department for Public Health affirming that the person who intends to engage in lead hazard detection or abatement activities has successfully completed the training and other requirements for such activities.

(3) "Certified" means that a person engaged in lead hazard

detection or abatement activity has successfully completed the required training through an accredited training program, completed other requirements established by the department, and has been issued a document of certification.

(4) The definition of "child-occupied facility" shall be governed by 1996 Ky. Acts ch. 168.

(5) "Department" means the Department for Public Health.

(6) "Discipline" means one (1) of the specific types or categories of lead hazard assessment and abatement activities for which individuals may receive certification such as lead hazard abatement worker, lead hazard inspector, lead hazard worker, and lead hazard project designer.

(7) "EPA" means the U.S. Environmental Protection Agency.

(8) "Lead hazard" means any condition that causes exposure to lead from lead-contaminated dust, soil, water or deteriorated paint which is present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

(9) The definition of "lead hazard abatement" shall be governed by 1996 Ky. Acts ch. 168.

(10) "Lead hazard company" means a company who employs only individuals that are department certified in a lead hazard discipline.

(11) "Lead hazard abatement worker" means a person who has been trained to perform physical lead hazard abatement activities.

(12) The definition of "lead hazard detection" shall be governed by 1996 Ky. Acts ch. 168.

(13) "Lead hazard inspector" means a person who has been trained in lead inspection by an accredited training program. An inspector also collects samples for analysis for the presence of lead in paint, dust, water and soil for the purpose of lead hazard detection, potential abatement or clearance testing.

(14) "Lead hazard project designer" means a person who has been trained by an accredited training program to prepare abatement plans, prepare occupant protection plans, and prepare abatement reports.

(15) "Lead hazard risk assessment" means an on-site investigation to determine the existence, nature, severity, location of lead hazards, and the provision of a report by the individual or firm conducting the risk assessment, explaining the results of the investigation and options for reducing the potential for lead exposure.

(16) "Lead hazard risk assessor" means a person who has been trained by an accredited training program to conduct risk assessments. A risk assessor also may sample for the presence of lead in paint, dust, and soil for the purpose of lead hazard detection, or conduct potential abatement and clearance testing.

(17) "Lead hazard supervisor" means a person who has been trained by an accredited training program to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

(18) The definition of "target housing" shall be governed by 1996 Ky. Acts ch. 168.

(19) "Third-party exam" means an exam approved by the department that is administered by the department or its designated agent. This does not include course exams administered by an accredited training program.

Section 2. Scope and Application. This administrative regulation contains procedures and requirements for the certification of individuals engaged in lead hazard detection and abatement in target housing and child-occupied housing after July 1, 1997.

Section 3. Application for Certification. (1) An individual seeking certification by the department shall submit to the department the applicable fee, application and documentation demonstrating that he meets the requirements established in Section 4, or if applicable, Section 5 of this administrative regulation. The fee payment shall be according to the particular discipline for which certification is sought,

as specified in Section 7 of this administrative regulation.

(2) Following the submission of an application demonstrating that all requirements have been met and payment of the specified fee, the department shall certify an applicant as lead hazard inspector, risk assessor, supervisor, project designer, company, or abatement worker, as appropriate. The certification shall expire three (3) years after issuance. To maintain certification beyond three (3) years, an individual shall be recertified as described in Section 6 of this administrative regulation.

(3) Fees for certification shall not be imposed on department employees or its agents.

(4) Initial fees shall be submitted with each application in the form of check or money order, and be made payable to the Kentucky State Treasurer.

Section 4. Initial Certification. (1) A person who requests certification by the department shall provide documentation that he has:

(a) Successfully completed an accredited course in the appropriate discipline and received a course completion certificate from an accredited training program; and

(b) Except for lead hazard companies, successfully completed a third-party exam; and

(c) Met or exceeded the requirements for the appropriate discipline indicated as follows:

1. Lead hazard inspector discipline has no additional educational or experience requirements.

2. Lead hazard risk assessor.

a. Prior to taking the accredited risk assessor course, the person shall have successfully completed an accredited training course for inspectors; and

b. Have a bachelor's degree and one (1) year of experience in a related field dealing with lead, asbestos, or environmental remediation work, construction; or

c. Have an associate degree and two (2) years of experience in a related field dealing with lead, asbestos, or environmental remediation work, construction; or

d. Have certification as an industrial hygienist, professional engineer, registered architect, registered sanitarian or certification in another related engineering-health-environmental field (e.g., safety professional, environmental scientist); or

e. Have a high school diploma (or equivalent), and at least three (3) years of experience in a related field dealing with lead, asbestos, construction, or environmental remediation work.

3. Lead hazard supervisor.

a. Have one (1) year of experience as a certified lead hazard abatement worker; or

b. Have at least two (2) years of experience in a related field dealing with lead, asbestos, or environmental remediation work, or in the building trades.

4. Lead hazard project designer.

a. Prior to taking the accredited project designer course, the person shall have successfully completed an accredited training course for supervisors; and

b. Have a bachelor's degree in engineering, architecture, or a related profession, and one (1) year of experience in building construction and design or a related field; or

c. Have four (4) years of experience in building construction and design or a related field.

5. Lead hazard worker discipline has no additional experience or education requirements.

6. Lead hazard companies shall submit to the department a notarized affidavit from the company head affirming that all persons employed in the inspection, abatement, risk assessment, and other regulated lead program activities are certified by the department.

(2) Certain documents shall be provided to the department by the applicant as evidence of meeting certification requirements of a

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specific discipline. These documents are as follows:

- (a) Official academic transcripts, as evidence of meeting the educational requirements; and
- (b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience, requirements; and
- (c) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.
- (d) Certification of the successful completion of a third-party examination.

Section 5. Certification Based on Other Training. (1) An individual who qualifies for reciprocity certification under 1996 Ky. Acts ch. 168 shall be issued a certification upon providing proof of certification in an EPA approved lead program state or tribe and the payment of the applicable fee to the department.

(2) Any individual who received training in lead hazard assessment and abatement activities before July 1, 1997 shall be eligible for certification by the department under the following conditions:

- (a) The applicant shall demonstrate that they have successfully completed EPA recognized training in the conduct of the appropriate lead-based paint activity;
 - (b) Demonstrate that they meet the education and experience requirements in Section 4(c) of this administrative regulation;
 - (c) Have successfully completed an EPA recognized refresher course, if the training course identified in paragraph (a) of this subsection was before July 1, 1995; and
 - (d) Have successfully completed a third-party exam; and
 - (e) Pay the applicable fee for the particular discipline, as designated in Section 7 of this administrative regulation.
- (3) The individual applicant shall have until July 1, 1997, to apply to the department for certification. After that date, all individuals wishing to obtain certification shall be required to meet all of the requirements indicated in Section 4 of this administrative regulation.

Section 6. Renewal and Recertification Requirements. (1) To maintain certification in a particular discipline, a certified person shall:

- (a) Submit an annual renewal fee; and
 - (b) Apply to department for recertification sixty (60) days prior to end of the three (3) year certification period.
- (2) Except for lead hazard companies the person shall have successfully completed the appropriate accredited refresher training course and submit a valid copy of the completion certificate.
- (3) The person shall pay the applicable fee as designated in Section 7 of this administrative regulation.
- (4) Lead hazard companies shall submit a new notarized affidavit certifying that all employees hold certification.

Section 7. Fee Schedule. The fee for application for certification shall be made to the department in the amount for the particular discipline as indicated below:

| Fee Schedule | | |
|---------------------------------|---|---|
| Discipline | Initial Certification Application Fee (Due upon application for initial certification) | Renewal Application (Due every year) |
| Lead Hazard Project Designer | \$250 | \$250 |
| Lead Hazard Risk Assessor | \$150 | \$150 |
| Lead Hazard Inspector | \$140 | \$140 |

| | | |
|----------------------------------|-------|-------|
| Supervisor | \$125 | \$125 |
| Lead Hazard Abatement Worker | \$100 | \$100 |
| Reissue of lost certification | \$25 | |

Section 8. Suspension, Revocation, Denial and Modification of Certifications. The department may revoke, suspend, deny or restrict the certificate of any holder for causes indicated in 1996 Ky. Act ch. 168 of this administrative regulation.

Section 9. Procedures for Suspension, Revocation, Denial or Modification of the Certification. If the department finds cause to suspend, revoke, deny or modify the certification of any individual or firm, it shall notify the affected entity in writing of the following:

- (1) The legal and factual basis for the suspension, revocation, denial, or modification;
- (2) The commencement date and duration of the suspension, revocation, or modification;
- (3) Action, if any, which the certified individual may take to avoid suspension, revocation, or modification or to receive certification in the future;
- (4) The opportunity and method for requesting a hearing prior to final department action; and
- (5) Any additional information, as appropriate, which the department may provide.

Section 10. Administrative Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

RICE C. LEACH, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 27, 1996

FILED WITH LRC: October 1, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Nichols

(1) Type and number of entities affected: 1,000-2,000 in-state; 2,000-4,000 out-of-state (estimated) contractors, engineers, architects, construction workers, environmental health specialists, etc., who may desire certification to perform lead hazard detection and abatement services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: As regulation applies statewide, and affected individuals are currently engaged in similar work activities relative to construction, renovation and remodeling on a local, regional or statewide basis, there should be no change for in-state individuals. For out-of-state individuals, providing lead hazard detection and abatement services in Kentucky may result in either costs or savings relative to their state of origin's costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: For in-state individuals and firms costs will increase for those who choose to become certified. Cost increases involve receiving accredited training by third-party training providers (actual costs will vary depending on level of training, training site location, etc.), and certification cost for initial application and annual renewal (based on discipline level of certification desired). For out-of-state individuals and firms cost increases would be the same as above, in addition to any costs imposed by any other state or local governmental agencies for permission to do business within their jurisdiction. Actual cost to an individual/firm to attain and maintain certification and conduct business on an annual basis, is unknown due to start-up nature of the program and the highly variable

nature of their specific circumstances.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Reporting and paperwork will increase for those individuals and firms who choose to become certified. Proof of training documents, initial application for certification form, and application for annual renewal, will be generated by all certification recipients; higher certification levels will also generate inspection/abatement plan reports, lab test reports, clearance reports, etc., directly related to the services they provide. Costs will only increase for those individuals and firms who desire certification; as only certified individuals and firms can provide lead hazard detection and abatement services, any competitor will also be subject to the same requirements. Actual costs are unknown at this time, but should be similar to other state regulated services which require licensing or certification of service providers.

2. Second and subsequent years: No change from above, other than initial application for certification paperwork would not recur.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Program start-up costs for database development; forms/certificates; informational materials/program publicity; staffing; administration and enforcement are being covered by federal grant monies (2 yr. grant \$440,000), which results in a savings to the department.

2. Continuing costs or savings: Program operation beyond start-up should stabilize within 2-3 years as certified workforce levels attune to service volume. Fee collection should be sufficient to cover program cost by that time on a break-even basis.

3. Additional factors increasing or decreasing costs: None currently, although future federal mandates may warrant changes.

(b) Reporting and paperwork requirements: Will require setup and maintenance of a database for accredited training providers; certified service providers; status of abatement projects/testing and clearance status; creation of appropriate forms/educational materials; and quarterly/year-end reports to Federal EPA on program status. Also will require liaison with surrounding states for reciprocity/enforcement activities.

(4) Assessment of anticipated effect on state and local revenues: For agency, should be revenue neutral; for other state/local agencies which collect taxes or fees for construction activities or sales of materials, it may have a positive impact.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Start-up source of funding is by federal grant, with ongoing funding by fees.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: See (b) below.

(b) Kentucky: Should have positive impact on local/state economy relative to goods and services common to residential construction/remodelling/renovation. If out-of-state certified individuals/firms provide service then local revenues from lodging/meals/etc., also would increase. Negative impact should be limited to owners of properties with lead hazards present, and the costs of detection/abatement activities. Once abated, however, property value increase should balance abatement cost.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Do nothing alternative - not feasible, as statutes mandate regulatory program; and, do-nothing allows lead poisoning hazards to remain a threat to public health. Delay or minimal program alternatives - not feasible, as statute sets timetable for implementation in one instance, and federal mandates establish acceptable state program to avoid federal takeover of state lead activities.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: As program is statewide, all areas should reap public health and environmental benefits. The detection and removal of lead hazards from target housing and child-occupied structures will prevent current and future generations of children (and their parents) from the damage of lead poisoning. Requiring providers of lead hazard detection and abatement services to meet standards of training and competency, and be subject to continuing education and performance scrutiny, assures the property owner that work will be properly done.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, lead poisoning hazards for small children will remain which can result in permanent brain damage as well as other physical and mental effects. As to work being performed by certified providers, if work is not done properly it can result in a major increase in lead contamination and exposure to children and adults.

(c) If detrimental effect would result, explain detrimental effect: See above.

(9) 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:

(10) Any additional information or comments: Companion regulation to 902 KAR 47:090E and 47:100E.

(11) TIERING: Is tiering applied? Yes. As different levels of certification require different degrees of education, training and experience this regulation can be considered tiered.

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. May relate to any local government which owns/operates target housing and/or child-occupied facilities.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Would affect only those local governments which own/ operate target housing and/or child-occupied facilities, and only that part of local government involved in the management/maintenance of such structures.

3. State the aspect or service of local government to which this administrative regulation relates. Rental of target housing units and operation of child-occupied facilities and their maintenance.

4. How does this administrative regulation affect the local government or any service it provides. Will require that lead hazards in the above structures be addressed only by properly trained and certified personnel (either local government staff or third-party providers), and any mitigation or abatement work performed in compliance with state and federal regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 745; note that federal intent is that states and indian tribes establish their own lead programs and seek federal authorization to administer same; otherwise, federal EPA will enforce rules in states and tribal lands after August 31, 1998.

2. State compliance standards. KRS 211.9063 through 211.9075; and the proposed 902 KAR 47:080E, 47:090E, and 47:100E. Note: The above statutes and the proposed regulations have been drafted with federal EPA oversight, with the intent to secure federal authorization for Kentucky's Lead Program.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR Part 745

4. Will this administrative regulation impose stricter requirements,

or additional or different responsibilities or requirements, than those required by the federal mandate? 902 KAR 47:080E, 47:090E, and 47:100E have been reviewed by Region IV Federal EPA staff and edited to conform with federal mandates, so that application for authorization of the state program may proceed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State standards will mirror federal standards.

**STATEMENT OF EMERGENCY
902 KAR 47:090E**

The administrative regulation 902 KAR 47:090E establishes accreditation of training programs and providers of educational programs for individuals who perform lead hazard detection and abatement. This administrative regulation is needed to comply with 1996 Ky. Acts ch. 168 "Lead Hazard Act", and Section 403 of the U.S. Environmental Protection Agency's (EPA) Toxic Substances Control Act (TSCA), 15 USC 2683. It is necessary to promulgate this emergency administrative regulation to comply with statutory requirements that these regulations shall be promulgated before October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

**CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Environmental Health and Community Safety**

902 KAR 47:090E. Accreditation of training programs and providers of educational programs for individuals who perform lead hazard detection and abatement.

RELATES TO: KRS 211.900 through 211.905, 211.990, 211.994, 217.801

STATUTORY AUTHORITY: 211.090, 211.180, 1996 Ky. Acts ch. 168, EO 96-862

EFFECTIVE: October 1, 1996

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. 1996 Ky. Acts ch. 168 authorizes the Department for Public Health to promulgate administrative regulations relating to the accreditation of training programs and providers of educational programs for individuals who perform lead hazard detection and abatement activities in "target housing" or "child-occupied facilities" within the Commonwealth of Kentucky.

Section 1. Definitions. As used in this administrative regulation:

(1) "Accredited training program" means a training program that has been accredited by the department to provide training for individuals engaged in lead hazard detection and abatement activities.

(2) "Certified" means that a person engaged in lead hazard detection or abatement activities has successfully completed the training and other requirements for such activities established by the department, and has been issued a document of certification.

(3) "Certificate of accreditation" means a document issued by the department, or under the authority of the department, affirming that a training program is approved for individuals who perform lead hazard detection and abatement.

(4) The definition of "child-occupied facility" shall be governed by

1996 Ky. Acts ch. 168.

(5) "Course agenda" means an outline of the key topics to be covered during a training course, including time allotted to teach each topic.

(6) "Course test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

(7) "Course test blueprint" means written documentation identifying the percentage of course test questions devoted to each major topic in the course curriculum.

(8) "Department" means the Department for Public Health.

(9) "Discipline" means one (1) of the specific types or categories of lead hazard assessment and abatement activities for which individuals may receive certification such as lead hazard abatement worker, lead hazard inspector, lead hazard worker, and lead hazard project designer.

(10) "EPA" means the U. S. Environmental Protection Agency.

(11) "Hands-on skills assessment" means an evaluation which tests the trainees' ability to perform the work practices and procedures satisfactorily as identified in 902 KAR 47:100.

(12) "Lead hazard" means any condition that causes exposure to lead from lead-contaminated dust, soil, water or deteriorated paint which is present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

(13) The definition of "lead hazard abatement" shall be governed by 1996 Ky. Acts ch. 168.

(14) "Lead hazard abatement worker" means a person who has been trained to perform physical lead hazard abatement activities.

(15) The definition of "lead hazard detection" shall be governed by 1996 Ky. Acts ch. 168.

(16) "Lead hazard inspector" means a person who has been trained in lead inspection by an accredited training program. An inspector also collects samples for analysis for the presence of lead in paint, dust, water and soil for the purpose of lead hazard detection, potential abatement or clearance testing.

(16) "Lead hazard project designer" means a person who has been trained by an accredited training program to prepare abatement plans, prepare occupant protection plans, and prepare abatement reports.

(17) "Lead hazard risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead hazards, and the provision of a report by the individual or firm conducting the risk assessment, explaining the results of the investigation and options for reducing the potential for lead exposure.

(18) "Lead hazard risk assessor" means a person who has been trained by an accredited training program to conduct risk assessments. A risk assessor may also:

(a) Sample for the presence of lead in paint, dust, and soil for the purpose of lead hazard detection; or

(b) Conduct potential abatement and clearance testing.

(19) "Lead hazard supervisor" means a person who has been trained by an accredited training program to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

(20) "Principle instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

(21) The definition of "target housing" shall be governed by 1996 Ky. Acts ch. 168.

(22) "Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

(23) "Training hour" means at least fifty (50) minutes of actual teaching, including, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

(24) "Training manager" means the individual responsible for administering a training program and monitoring the performance of

principal and guest instructors.

(25) "Training program course" or "training course" means a planned training program for a specific work discipline for a lead hazard detection or abatement activity.

(26) "Training program provider" or "program provider" means a person or firm who is applying to the department to obtain accreditation to provide one (1) or more training programs for work disciplines in lead hazard detection and abatement.

Section 2. Scope. This administrative regulation contains requirements for the application procedures, qualifications, and fee schedule for accreditation of training programs for persons engaged in lead hazard activities relating to detection and abatement in "target housing" or "child-occupied" facilities in the Commonwealth beginning January 1, 1997.

Section 3. Initial Application for Accreditation. (1) The training program provider shall submit to the department the applicable fee, application, and documentation demonstrating they meet the requirements established in this administrative regulation.

(2) The training program provider shall abide by the following procedures in order to receive accreditation to offer a training program course or courses:

(a) Submit a fee payment of \$800 and written application containing the following information:

1. The program provider's name, address, and telephone number;
2. A list of courses for which it is applying for accreditation; and
3. Accreditation from another state, which has been recognized as being substantially equal to or greater than the requirements established by the department; or
4. A statement signed by the training manager certifying that the training program meets the minimum requirements indicated in this administrative regulation.

(b) If a program provider uses the EPA-developed model training materials, the training program manager shall also include a statement so certifying.

(c) If a program provider does not use the EPA-developed model, its application for accreditation shall include:

1. A copy of the student and instructor manuals to be used for each course; and
2. A copy of the course agenda for each course.

(d) In addition, the training program provider shall include in his application for accreditation the following:

1. The description of the facilities and equipment to be used for lecture and hands-on training;
2. A copy of the course test blueprint for each course;
3. A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and
4. A copy of the quality control plan as indicated in Section 7(2)(c) of this administrative regulation.

Section 4. Review of Application. (1) The department shall approve or disapprove an application for accreditation no more than sixty (60) days after its receipt. If needed, during that time period the department shall request clarification or additional information from the applicant.

(2) In the case of acceptance, a notice of approval and accreditation certificates for each training program shall be sent to the applicant.

(3) In the case of disapproval, a letter describing the reason for disapproval shall be sent to the applicant. The applicant may correct the unapproved conditions and reapply for accreditation if desired.

(4) A program provider may apply for accreditation to offer courses or refresher courses in as many disciplines as desired and seek accreditation for additional courses at any time.

Section 5. Additional Requirements of the Training Provider. (1)

The training provider shall ensure the availability of and provide adequate facilities for the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(2) The provider shall ensure that a course test be given for each course offered at its completion, and if applicable, a hands-on skill assessment. Each individual shall successfully complete the hands-on skills assessment and receive a passing score on the course test to receive certification.

(3) The provider shall also ensure the issuance of the unique course completion certificate to each individual who passes the training course. The course completion certificate shall include the following:

- (a) Name, unique identification number, and address of the individual;
- (b) Title of the particular course that the individual completed;
- (c) Date of course completion or test passage; and
- (d) Name, address, and telephone number of the training program provider.

Section 6. Requirement of the Training Manager. For a training program provider to obtain accreditation to offer lead hazard training courses, he shall employ a training manager who has the following qualifications:

(1) At least two (2) years of experience, education, or training in teaching adults; or

(2) A bachelor or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management; or

(3) Two (2) years experience in managing an occupational health and safety training program specializing in environmental hazards; and

(4) Demonstrated experience, education, or training in the construction industry that includes:

- (a) Lead or asbestos abatement;
- (b) Painting;
- (c) Carpentry;
- (d) Renovation;
- (e) Remodeling;
- (f) Occupational safety and health; or
- (g) Industrial hygiene.

Section 7. Responsibilities of the Training Manager. (1) It shall be the responsibility of the training manager to review the qualifications of and to designate a qualified principal instructor to organize the course and oversee the teaching of all course materials. The qualifications of the instructor is as follows:

(a) Demonstrated experience, education, or training in teaching workers or adults; and

(b) Successfully completed at least sixteen (16) hours of any EPA-accredited, or EPA-authorized state or tribal accredited lead-specific training; and

(c) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovating, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall also have the following responsibilities:

(a) Designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course; and

(b) Shall also be responsible for conducting the following activities which concern course activities and course evaluation:

1. Maintaining the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics;

2. Maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics; and

3. Insuring that the course test was developed in accordance with the course test blueprint submitted with the training accreditation application.

(c) Shall also develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

1. Procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

2. Procedures for the training managers annual review of principal instructor competency.

(d) Shall also be responsible for ensuring that the program provider complies at all times with all of the requirements of this administrative regulation.

Section 8. Supportive Documentation. (1) Certain documents shall be recognized by the department as evidence that the training managers and principal instructors have the education, work experience, training requirements or experience.

(2) The documents are not required to be submitted with the initial accreditation application, but shall be retained by the program provider and shall be provided to the department upon request. Those documents include the following:

(a) Official academic transcripts, as evidence of meeting the education requirements; and

(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirement; and

(c) Certificates from train the trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

Section 9. Inspection Requirements. (1) The training program provider shall allow representatives of the department to conduct unannounced on-site audits of the training program.

(2) The department shall if needed, use other indirect methods shall be used to verify the contents of the application for accreditation.

Section 10. Knowledge of Work Practice Standards. (1) The training program provider shall offer courses which teach the work practice standards established by this administrative regulation for conducting lead hazard activities and other related standards developed by EPA, and other federal and state agencies.

(2) These standards shall be taught in the appropriate courses to provide trainees with knowledge needed to perform the lead hazard evaluation and abatement activities they are responsible for conducting.

Section 11. Requirements for Specific Program Disciplines. The training program provider shall provide training courses that meet the following training hour requirements:

(1) The "lead hazard inspector" course shall last a minimum of twenty-four (24) training hours, including a minimum of eight (8) hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course topics are as follows:

(a) Role and responsibilities of an inspector;

(b) Background information on lead and its adverse health effects;

(c) Background information on federal, state and local regulations and guidance that pertains to lead hazards and lead hazard assessment and abatement activities;

(d) Lead hazard inspection methods, including selection of rooms and components for sampling or testing, with hands-on activities;

(e) Paint, dust, water and soil sampling methodologies, with hands-on activities;

(f) Clearance standards and testing, including random sampling,

with hands-on activities;

(g) Preparation of an inspection report, with hands-on activities; and

(h) Recordkeeping.

(2) The "lead hazard risk assessor" course shall last a minimum of sixteen (16) training hours, including a minimum of four (4) hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course topics are as follows:

(a) Role and responsibilities of the risk assessor;

(b) Collection of background information to perform a risk assessment;

(c) Sources of environmental lead contamination found in paint, surface dust, soil, water and air, packaging and food;

(d) Visual inspection for the purposes of identifying potential sources of lead-in-paint hazards, which includes hands-on activities;

(e) Lead hazard screening protocol;

(f) Sampling for other sources of lead exposure, with hands-on activities;

(g) Interpretation of lead-in-paint and other lead sampling results, including all applicable federal or state guidance pertaining to lead-in-paint hazards, with hand-on activities;

(h) Development of hazard control options, the role of interim controls, and operation and maintenance activities to reduce lead-in-paint hazards; and

(i) Preparation of a final risk assessment report.

(3) The "lead hazard supervisor" course shall last a minimum of thirty-two (32) training hours, including a minimum of eight (8) hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course topics are as follows:

(a) Role and responsibilities of a supervisor;

(b) Background information on lead and its adverse health effects;

(c) Background information on federal, state, and local regulations and guidance that pertain to lead hazards and lead hazard assessment and abatement activities;

(d) Liability and insurance issues relating to lead-in-paint abatement;

(e) Risk assessment and inspection report interpretation, with hands-on activities;

(f) Development and implementation of an occupant protection plan;

(g) Lead-in-paint hazard recognition and control, with hands-on activities;

(h) Lead-in-paint abatement and lead hazard reduction methods, including restricted practices, with hands-on activities;

(i) Interior dust abatement, cleanup, or lead hazard control and reduction methods, with hand-on activities;

(j) Soil and exterior dust abatement or lead hazard control and reduction methods, with hands-on activities;

(k) Clearance standards and testing;

(l) Cleanup and waste disposal; and

(m) Recordkeeping.

(4) The "lead hazard project designer" course shall last a minimum of eight (8) training hours. The minimum requirements for the project designer course are as follows:

(a) Role and responsibilities of a project designer;

(b) Development and implementation of an occupant protection plan for large scale abatement projects;

(c) Lead-in-paint abatement and lead hazard reduction methods, including restricted practices for large scale abatement projects;

(d) Interior dust abatement, cleanup, or lead hazard control and reduction methods for abatement projects;

(e) Clearance standards and testing for large scale abatement projects; and

(f) Integration of lead-in-paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(5) The "lead hazard abatement worker" course shall be a minimum of sixteen (16) training hours, including a minimum of eight

(8) hours devoted to hands-on training activities. The minimum requirements for the worker course are as follows:

- (a) Role and responsibilities of an abatement worker;
- (b) Background information on lead and its adverse health effects;
- (c) Background information on federal, state, and local regulations and guidance to lead hazard abatement;
- (d) Lead hazard recognition and control, with hands-on activities;
- (e) Lead hazard abatement and lead hazard reduction methods, including restricted practices, with hands-on activities;
- (f) Interior dust abatement methods, cleanup, or lead-in-paint hazard reduction, with hands-on activities; and
- (g) Soil and exterior dust abatement methods of lead-based paint hazard reduction, with hands-on activities.

Section 12. Accreditation of Refresher Training Programs. (1) A training program provider may seek accreditation to offer refresher training courses. To obtain accreditation to offer training courses, the program provider shall meet the following minimum requirements:

(a) Each refresher course shall teach the curricula topics of the full-length courses listed in Section 11 of this administrative regulation. In addition, the course study shall include:

- 1. An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline;
- 2. Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the applicable discipline; and
- 3. Current technologies relating to lead hazard in paint activities in general, as well as specific information pertaining to the applicable discipline.

(b) Each course shall, except for the project designer course, shall last a minimum of eight (8) hours. The project designer course shall last a minimum of four (4) hours.

(c) For each course offered, the training program shall conduct, if applicable, a hands-on assessment, and at the completion of the course, a course test.

(2) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in Section 3 of this administrative regulation. If so, the department shall use the approval procedure as described in Section 4 of this administrative regulations. In addition, the program shall meet other program requirements specified in this administrative regulation.

Section 13. Reccreditation of Training Programs. (1) Unless reaccredited, a training program provider's accreditation (including refresher training accreditation) shall expire four (4) years after issuance.

(2) A training program provider seeking reaccreditation shall submit a fee payment of \$1200, and application to the department no later than sixty (60) days before their accreditation expires.

(3) The program provider's application for reaccreditation shall contain:

- (a) The program provider's name, address, and telephone number;
- (b) A list of courses for which they are applying for reaccreditation;
- (c) A description of any changes or updates to the training facility or equipment since the last application was approved; and
- (d) A statement signed by the program manager stating:
 - 1. The training program provider complies at all times with all accreditation requirements indicated in this administrative regulation, as applicable;
 - 2. The recordkeeping and reporting requirements of this administrative regulation shall be followed.
- (4) Upon request, the training program shall allow the department to audit the training program provider to verify the contents of the

application for reaccreditation as described in this section.

Section 14. Recordkeeping Requirements. (1) An accredited training program provider shall maintain and make available to the department, upon request the following records:

- (a) All documents specified in Section 8 of this administrative regulation that demonstrate the qualifications of the training manager and principal instructors;
- (b) Current curriculum, course materials, and documents reflecting any changes made to these materials;
- (c) The course test blueprint; and
- (d) Information regarding how the hands-on assessment is conducted such as:
 - 1. Who conducts the assessment;
 - 2. How the skills are graded,
 - 3. What facilities are used; and
 - 4. The pass or fail rate.
- (e) The quality control plan.
- (f) Results of the student's hands-on skills assessments and course test, and a record of each student's course completion certification; and
- (g) Any other material not listed in paragraphs (a) through (f) of this subsection that was submitted to the department as part of the program's application for accreditation.

(2) The training program provider shall retain these records at the address specified on the accreditation application, or modified in accordance with subsection (3) of this section, for a minimum of three (3) years and six (6) months.

(3) The training program provider shall notify the department in writing within thirty (30) days of changing the address specified on their training program provider accreditation application or transferring the records from that address.

Section 16. Notice to Suspend, Revoke, Deny or Modify Accreditation. The department may suspend, revoke, deny or modify the accreditation for any training program, if the training program provider fails to comply with the accreditation requirements. At that time, the department shall notify the training program provider in writing of the following:

- (1) The legal and factual basis for the suspension, revocation, denial, or modification;
- (2) The commencement date and duration of the suspension, revocation, or modification;
- (3) Action, if any, which the affected certified person may take to avoid suspension, revocation, denial or modification to certification in the future;
- (4) The opportunity and method for requesting a hearing prior to final department action; and
- (5) Any additional information, as appropriate, which the department may provide.

Section 17. Administrative Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

RICE C. LEACH, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 27, 1996

FILED WITH LRC: October 1, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Nichols

(1) Type and number of entities affected: 20-30 training providers (in-state and out-of-state) for lead hazard detection and abatement services training.

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

- (a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comment received: As regulation applies statewide, training providers currently engaged in similar training activities relative to construction, renovation and remodeling on a local, regional or statewide basis, there should experience no change for in-state providers. For out-of-state providers there would be no impact.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: For in-state individuals and firms costs will increase for those who choose to become accredited as training providers. Cost increases involve being accredited to offer training in approved discipline levels (actual costs will vary depending on level of training, training site location, etc.), and accreditation cost for initial application and annual renewal (based on discipline levels of accreditation desired). For out-of-state training providers, accreditation costs would also apply. Actual cost to an individual/firm to attain and maintain accreditation as trainers and conduct business on an annual basis, is unknown due to startup nature of the program and the highly variable nature of their specific circumstances.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Reporting and paperwork will increase for those individuals and firms who choose to become training providers seeking accreditation. Training curricula (federal EPA approved), course content documentation, initial application for accreditation form, and application for annual renewal, will be generated by all accreditation recipients; costs will only increase for those individuals and firms who desire accreditation as training providers; as only accredited training providers can provide lead hazard detection and abatement training. Any competitor will also be subject to the same requirements. Actual costs are unknown at this time, but should be similar to other state regulated training which requires licensing or accreditation for training providers.

2. Second and subsequent years: No change from above, other than initial application for accreditation paperwork would not recur.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Program start-up costs for database development; forms/certificates; informational materials/program publicity; staffing; administration and enforcement are being covered by federal grant monies (2 yr. grant \$440,000), which results in a savings to the department.

2. Continuing costs or savings: Program operation beyond start-up should stabilize within 2-3 years as certified workforce levels attune to service volume. Fee collection should be sufficient to cover program cost by that time on a break-even basis.

3. Additional factors increasing or decreasing costs: None currently, although future federal mandates may warrant changes.

(b) Reporting and paperwork requirements: Will require setup and maintenance of a database for accredited training providers; certified service providers; status of abatement projects/testing and clearance status; creation of appropriate forms/educational materials; and quarterly/year-end reports to federal EPA on program status. Also will require liaison with surrounding states for reciprocity/enforcement activities.

(4) Assessment of anticipated effect on state and local revenues: For agency, should be revenue neutral; for other state/local agencies which collect taxes or fees for construction activities or sales of materials, it may have a positive impact.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Start-up source of funding is by federal grant, with ongoing funding by fees.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: See (b) below.

(b) Kentucky: Should have positive impact on local/state economy relative to goods and services common to residential construction/remodeling/renovation. If out-of-state individuals/firms attend training then local revenues from lodging/meals/etc., also would increase.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Do nothing alternative - not feasible, as statutes mandate regulatory program; and, do-nothing allows lead poisoning hazards to remain a threat to public health. Delay or minimal program alternatives - not feasible, as statute sets timetable for implementation in one instance, and federal mandates establish acceptable state program to avoid federal takeover of state lead activities.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: As program is statewide, all areas should reap public health and environmental benefits. The detection and removal of lead hazards from target housing and child-occupied structures will prevent current and future generations of children (and their parents) from the damage of lead poisoning. Requiring providers of lead hazard detection and abatement services to meet standards of training and competency, and be subject to continuing education and performance scrutiny, assures the property owner that work will be properly done.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, lead poisoning hazards for small children will remain which can result in permanent brain damage as well as other physical and mental effects. As to work being performed by certified providers, if work is not done properly it can result in a major increase in lead contamination and exposure to children and adults.

(c) If detrimental effect would result, explain detrimental effect: See above.

(9) 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:

(10) Any additional information or comments: Companion regulation to 902 KAR 47:080E and 47:100E.

(11) TIERING: Is tiering applied? No. Tiering was not used because performance standards must apply equally statewide for the same work, and accreditation standards for course curricula must be uniform to assure equivalency for reciprocity purposes between states.

STATEMENT OF EMERGENCY 902 KAR 47:100E

The administrative regulation 902 KAR 47:100E establishes permit fees, permit requirements and procedures, and standards for performing lead hazard detection and abatement. This administrative regulation is needed to comply with 1996 Ky. Acts ch. 168, "Lead Hazard Act", and Section 403 of the U.S. Environmental Protection Agency's (EPA) Toxic Substances Control Act (TSCA), 15 USC 2683. It is necessary to promulgate this emergency administrative regulation to comply with statutory requirements that these regulations shall be promulgated before October 1, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Environmental Health and Community Safety

902 KAR 47:100E. Permit fees, permit requirements and procedures, and standards for performing lead hazard detection and abatement.

RELATES TO: KRS 211.900 through 211.905, 211.190, 211.994, 217.801

STATUTORY AUTHORITY: 211.090, 211.180, 1996 Ky. Acts ch. 168, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. 1996 Ky. Acts ch. 168 authorizes the Department for Public Health to promulgate administrative regulations relating to the establishment of permit fees, permit requirements and procedures, and standards for performing lead hazard detection and abatement in detection of lead hazard abatement activities in "target housing" or "child-occupied facilities."

Section 1. Definitions. As used in this administrative regulation:

(1) "Abatement lead level in paint" means that the level of lead in paint or similar coating contains lead equal to or in excess of one (1.0) milligrams per square centimeter or more than one-half (0.5) percent by weight.

(2) "Abatement permit" means a permit issued by the department or its representative to a firm or individual who intends to conduct lead hazard abatement in target housing or child-occupied facilities.

(3) "Abatement permit holder" means a certified project designer, risk assessor or supervisor, who has been issued an abatement permit.

(4) "Adequate quality control" means a plan or design which ensure the authenticity, integrity, and accuracy of samples; including dust, soil, and paint chips. Adequate quality control also includes provision for representative sampling.

(5) "Certified" means that a person engaged in lead hazard detection or abatement activities has successfully completed the training and other requirements for such activities established by the Department for Public Health and has been issued a document of certification.

(6) "Child" or "children" means an individual or individuals who are six (6) years of age or less.

(7) The definition "child-occupied facility" shall be governed by 1996 Ky. Acts ch. 168.

(8) "Clearance level" means an assigned value that indicates the maximum amount of lead permitted in dust on a surface following completion of an abatement activity or levels found during a screening of a dwelling for lead hazards.

(9) "Common area" means a portion of a building that is generally accessible to children. Such an area may be hallways, stairways, laundry and recreational rooms, playgrounds, community center, garages, and boundary fences.

(10) "Component or building component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form function, and location.

(11) "Containment" means a process to protect workers and the environment by controlling exposures to lead-contaminated dust and debris created during an abatement.

(12) "Deteriorated paint" means paint that is cracking, flaking, chipping, peeling or separating from the substrate of a building component.

(13) "Department" means the Department for Public Health.

(14) "Distinct painting history" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(15) "Documented methodologies" means methods or protocols used to sample for the presence of lead in paint, dust, and soil.

(16) "Encapsulant" means a substance that forms a barrier between lead containing paint and the environment, using a liquid-applied coating or an adhesively bonded covering material.

(17) "Encapsulation" means the application of an encapsulant.

(18) "Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate, in order to act as a barrier between the underlying lead containing paint and the environment. This does not include the application of paneling to lead painted surface through the use of a fastening method that does not disturb the underlying lead painted surface.

(19) "EPA" means the U.S. Environmental Protection Agency.

(20) "Interim controls" means a set of measure designed to temporarily reduce human exposure or likely exposure to lead in paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing in monitoring, and the establishment and operation of management and resident educational programs.

(21) "Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at or in excess of clearance levels.

(22) "Lead-contaminated soil" means bare soil on residential real property and on the property of a child-occupied facility that contains lead at or in excess of levels identified in EPA guidelines.

(23) "Lead hazard" means any condition that causes exposure to lead from lead-contaminated dust, soil, or paint that is deteriorated or present in accessible surfaces, friction or impact surfaces, that would result in adverse human health effects.

(24) The definition of "lead hazard abatement" is governed by 1996 Ky. Acts ch. 168.

(25) "Lead hazard abatement worker" means a person who has been trained to perform physical lead-abatement hazard activities.

(26) "Lead hazards activities" means, in the case of target housing and child-occupied facilities, inspection, screening, risk assessment, and abatement.

(27) The definition of "lead hazard detection" is governed by 1996 Ky. Acts ch. 168.

(28) "Lead hazard inspection" means a surface-by-surface examination to determine the presence of lead hazards and the provision of a report explaining the results of the investigation.

(29) "Lead hazard inspector" means a person who has been trained in lead inspection by an accredited training program. An inspector also collects samples for analysis for the presence of lead in paint, dust and soil for the purpose of lead hazard detection, potential abatement or clearance testing.

(30) "Lead hazard project designer" means a person who has been trained by an accredited training program to prepare abatement plans, prepare occupant protection plans, and prepare abatement reports.

(31) "Lead hazard risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead hazards, and the provision for a report by the individual or the firm conducting the risk assessment, explaining the results or the investigation and options for reducing the lead hazards.

(32) "Lead hazard risk assessor" means a person who has been trained by an accredited training program to conduct risk assessments. A risk assessor may also: sample for the presence of lead in paint, dust, and soil for the purpose of lead hazard detection, or conduct potential abatement and clearance testing.

(33) "Lead hazard screen" means a risk assessment activity that involves limited paint and dust or other potential lead hazard sampling.

(34) "Lead hazard supervisor" means a person who has been

trained by an accredited training program to supervise and conduct abatements, and prepare occupant protection plans and abatement reports.

(35) "Living area" means area of a residential dwelling used by one (1) or more children, such as living rooms, kitchen area, dens, play rooms, and children's bedrooms.

(36) "Multifamily dwelling" means a structure that contains more than one (1) separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, as the home or residence of one (1) or more persons.

(37) "Paint in poor condition" means more than ten (10) square feet of deteriorated paint on exterior components with large surface areas; or more than two (2) square feet of deteriorated paint on interior components with large surface areas (walls, ceilings, floors, doors); or more than ten (10) percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

(38) "Permanently covered soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

(39) "Quality assurance inspection" an inspection conducted by the department or the department's representative at the conclusion of the abatement for the purpose of determining if the lead abatement activity and process complied with certification requirements, work practices and performance standards.

(40) "Recognized laboratory" means an environmental laboratory recognized by EPA as being capable of performing an analysis for lead compounds in paint, soil, dust and water.

(41) "Reduction" means measures designed to reduce or eliminate human exposure to lead hazards through methods including interior controls and abatement.

(42) "Residential dwelling" means:

(a) A detached single family dwelling unit, including attached structures such as porches and stoops; or

(b) A single family dwelling unit in a structure that contains more than one (1) separate residential dwelling unit, which is used or occupied, or intended to be used or occupied as the home or residence of one (1) or more persons.

(43) "Room" means an enclosed or semienclosed space within a residential dwelling for a child-occupied facility.

(44) The definition of "target housing" is governed by 1996 Ky. Acts ch. 168.

(45) "Visual inspection for clearance testing" means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed, as indicated by the absence of visible residue, dust, and debris.

(46) "Visual inspection for risk assessment" means the visual examination of a residential dwelling or child-occupied facility to determine the existence of deteriorated lead containing paint or other potential sources of lead hazards.

(47) "XRF" means an x-ray fluorescence device that indicates the lead levels of paint on a painted surface.

Section 2. Scope. This administrative regulation establishes requirements and procedures, and standards for performing lead hazard detection and abatement activities in "target housing" or "child-occupied facilities". This administrative regulation also establishes a fee schedule, for abatement activities in these locations.

Section 3. Work Practices Requirements and Methodologies. (1) Beginning July 1, 1997 all lead hazard detection and abatement activities in "target housing" and "child-occupied facilities" shall be performed pursuant to work practice standards and procedures established by this administrative regulation; and

(2) In addition, shall perform the activities using the following technical documented methodologies, which are adopted without change for use in this administrative regulation:

(a) U.S. Department of Housing and Urban Development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" edition June, 1995;

(b) "EPA Guidance on Residential Lead-Based Paint, Lead-contaminated Dust, and Lead-Contaminate Soil" edition July 14, 1994; and

(c) "EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling" (EPA report number 7474-R-95-001) edition March 1995.

(3) Copies of these federal guidelines are on file in the Office of the Commissioner, Department for Public Health, 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 guidelines are also available from the specified federal agencies indicated in titles of the documents.

Section 4. Lead hazard inspections. (1) Work practice standards and procedures for lead hazard inspections shall be as follows:

(a) Inspections shall be conducted only by an individual certified by the department as a lead hazard inspector or lead hazard risk assessor;

(b) The following sites shall be selected according to documented methodologies and tested for the presence of lead in paint:

1. In a residential dwelling and child-occupied facility, each interior or exterior component with a distinct painting history shall be tested for lead levels, except those components that the inspector or risk assessor determine to have been replaced after 1978, or not coated with paint; and

2. In addition, in a multifamily dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determine to have been replaced after 1978, or not coated with lead-containing paint.

(c) Paint shall be sampled or tested in the following manner:

1. The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate quality control procedures; and

2. All collected paint chip samples shall be analyzed according to Section 11 of this administrative regulation, to determine if they contain detectable levels of lead.

(2) In addition to performing the specified work practices and activities, the certified lead hazard inspector or risk assessor shall prepare an inspection report which shall include the following:

(a) Date of each inspection;

(b) Address of building;

(c) Date of construction;

(d) Apartment numbers (when applicable);

(e) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(f) Name, signature, and certification number of the certified inspector or risk assessor conducting the inspection;

(g) Name, address, and telephone number of the firm or individual employing each inspector or risk assessor, when applicable;

(h) Name, address, and telephone number of each laboratory conducting an analysis of collected samples, when applicable;

(i) Each testing method, testing device, or sampling procedure employed for paint analysis, including quality control data, and when used the serial number and radioactive materials license number of any x-ray fluorescence (XRF) device;

(j) Specific locations of each painted component tested for the presence of lead in paint; and

(k) The results of the inspection expressed in terms appropriate to the sampling method used.

(3) A copy of the lead hazard inspection report shall be main-

tained by the certified individual for the time period specified in Section 13 of this administrative regulation. In addition, a copy of the inspection report shall be submitted to the department within thirty (30) days after the completion of the inspection.

Section 5. Lead hazard Screening. (1) Work practice standards and procedures for lead hazard screening shall be as follows:

(a) A lead hazard screen shall be conducted only by a person certified by the department as a risk assessor; and

(b) When conducting a lead hazard screen the risk assessor shall:

1. Collect background information regarding the physical characteristics of the residential dwelling or child-occupied facility, and occupant use patterns that may cause lead exposure to one (1) or more children;

2. Conduct a visual inspection of the residential dwelling or child-occupied facility to determine if any deteriorated paint is present, and locate at least two (2) dust sampling locations;

3. Test for the presence of lead on each surface with deteriorated paint, which is determined by using documented methodologies to be in "poor condition" and to have a "distinct painting history";

4. Collect two (2) composite dust samples. One (1) from the floors and the other from the windows, in rooms where one (1) or more children are most likely to come in contact with dust; and

5. Collect additional samples in multifamily dwellings and child-occupied facilities. Composite dust samples shall be collected from common area where one (1) or more children are most likely to come into contact with dust.

(c) All collected paint chip or dust samples shall be taken using documented methodologies that incorporate adequate control procedures, and shall be analyzed under the conditions indicated in Section 11 of this administrative regulation.

(2) In addition to performing the specified work practices and activities, the risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(a) The information required in a risk assessment report as specified in Section 6(2)(a) through (p) of this administrative regulation. Additionally, any background information collected pursuant to Section 6(1)(b)2 of this administrative regulation shall be included in the risk assessment report; and

(b) Recommendations, when warranted, for a follow-up risk assessment, and when appropriate, any further actions.

(3) A copy of the lead hazard screen report shall be maintained by the certified individual for the time period specified in Section 13 of this administrative regulation. In addition, a copy of the report will be submitted to the department within thirty (30) days after the completion of the assessment.

Section 6. Lead hazard Risk Assessments. (1) Work practice standards and procedures for risk assessments shall be as follows:

(a) A risk assessment shall be conducted only by a person certified by the department as a risk assessor.

(b) When conducting a lead hazard screen the risk assessor shall:

1. Conduct a visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and review for other potential sources of lead hazards;

2. Collect background information regarding the physical characteristic of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead in paint exposure to one (1) or more children;

3. Test the following locations for presence of lead:

a. Deteriorated paint, which is determined by using documented methodologies to be in "poor condition" and to have a "distinct painting history"; and

b. Other surfaces or sites determined, using documented methodologies, to be a potential lead hazard;

4. Collect in residential dwelling, dust samples (either composite or single-surface samples) from the window and floor shall be collected in all living areas where one (1) or more children are most likely to come into contact with dust;

5. Collect additional samples in multifamily dwellings and child-occupied facilities. Window and floor dust samples (either composite or single-surfaces samples) shall be collected in the following locations:

a. Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

b. Other common areas in the building where the risk assessor determines that one (1) or more children are likely to come into contact with dust;

6. Collect additional samples in child-occupied facilities. Window and floor dust samples (either composite or single-surface samples) shall be collected in each room utilized by one (1) or more children, and in other common areas where the risk assessor determines children are likely to come in contact with dust;

7. Collect soil samples to be collected and analyzed for lead concentration in the following locations:

a. Exterior play areas where bare soil is present; and

b. Dripline or foundation areas where bare soil is present.

(c) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate quality control procedures.

(d) Any collected paint chip, dust, or soil samples shall be analyzed accordingly by an EPA recognized laboratory to determine if they contain detectable levels of lead.

(2) In addition to performing the specified work practices and activities, the certified risk assessor shall prepare a risk assessment report which shall include the following information:

(a) Date of assessment;

(b) Address of each building;

(c) Date of construction of buildings;

(d) Apartment numbers (when applicable);

(e) Name, address, and telephone number of each owner of each building;

(f) Name, signature, and certification number of the certified risk assessor conducting the assessment;

(g) Name, address, and telephone number of the firm or individual employing each certified risk assessor, when applicable;

(h) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

(i) Results of visual inspection;

(j) Testing method and sampling procedure for paint analysis employed;

(k) Specific locations of each painted component tested for the presence of lead in paint; and

(l) All data collected from on-site testing, including quality control, data, and when used, the serial number of any XRF device;

(m) All results of laboratory analysis on collected paint, soil and dust samples;

(n) Any other sampling results;

(o) Any background information collection pursuant to subsection (1)(b)2 of this section.

(p) The extent of any previous inspection or analysis for the presence of lead, lead assessments, or other lead hazards found, that are used as part of the lead in paint hazard determination;

(q) A description of the location, type, and severity of identified lead in paint hazards and any other potential lead hazards;

(r) A description of interim controls or abatement options for each identified lead hazard, and suggested priority for addressing each hazard; and

(s) When the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring

schedule for the encapsulant or enclosure.

(3) A copy of the risk assessment report shall be maintained by the certified individual for the time period specified in Section 13 of this administrative regulation. In addition, a copy of the report shall be submitted to the department within thirty (30) days after the completion the assessment.

Section 7. Lead hazard Abatement. (1) Standards and procedures for lead hazard abatement shall be as follows:

(a) Certification, abatement permit and fee shall be required by the department for lead hazard abatement activities, and are as follows:

1. An abatement permit shall be obtained from and issued by the department under the procedures indicated in Section 14 of this administrative regulation, prior to the commencement of lead hazard abatement activities;

2. The fee payment shall be according to the fee schedule indicated in Section 15 of this administrative regulation; and

3. A lead hazard abatement shall be conducted only by individuals certified by the department. A certified lead supervisor, lead risk assessor or project designer shall be available to the lead abatement workers at all times while abatement is being conducted. A certified lead supervisor, lead risk assessor or project designer shall be on site during all work site preparation and during the post-abatement cleanup of work areas.

(b) The certified supervisor and the abatement permit holder shall ensure that all abatement activities are conducted according to the requirements of this administrative regulation and all other federal, state, and local requirements.

(c) A written abatement and occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

1. A certified supervisor or certified project designer shall prepare the abatement and occupant protection plan;

2. A certified project designer shall prepare the plans for projects in which ten (10) or more residential dwellings will be abated. A certified supervisor or project designer may prepare the occupant protection plan for child-occupied facilities and projects in which fewer than ten (10) residential dwellings will be abated;

3. The abatement plan shall be a detailed written description of the abatement, including abatement methods to be used, locations of rooms and components where abatement will occur, and reason for selecting particular abatement methods for each component; and

4. The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead hazards.

(d) When conducted, soil abatement shall be conducted in one (1) of the following ways:

1. When soil is removed, the lead-contaminated soil shall be replaced with soil that is not lead-contaminated; or

2. When soil is not removed, the lead-contaminated soil shall be permanently covered.

(2) The following work practices shall be restricted during an abatement of paint containing lead:

(a) Open-flame burning or torching of the paint is prohibited;

(b) Machine sanding or grinding, or abrasive blasting or sand-blasting of the paint is prohibited unless used with a "high efficiency particulate air" (HEPA) exhaust control which removes particles of three-tenths (0.3) microns or larger from the air at 99.97 percent or greater efficiency;

(c) Dry scraping of the paint is permitted only in conjunction with heat guns, or around electrical outlets, or when treating defective paint spots total no more than two (2) square feet in any one room or totaling no more than twenty (20) square feet on exterior surfaces; and

(d) Operating a heat gun on paint is permitted only at temperatures below 1100 degrees Fahrenheit.

Section 8. Post Abatement Clearance Procedures. (1) Postabatement clearance procedures shall be performed only by a certified inspector or risk assessor.

(2) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces or visible amounts of dust, and debris or residue are still present. When deteriorated painted surfaces or visible amounts of dust are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(3) Following the visual inspection and any postabatement cleanup required, clearance sampling for lead-contained dust shall be conducted. Clearance sampling may be conducted by employing single-surfacing or composite sampling techniques.

(4) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures, and shall be taken a minimum of one (1) hour after completion of final postabatement cleanup activities.

(5) Rooms, hallways, stairwells or other sites selected for sampling shall be selected according to documented methodologies.

(6) The following post abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(a) After conducting an abatement with containment between abated and unabated areas, the number of samples and sites to be selected are as follows:

1. A minimum of one (1) dust sample shall be taken from one (1) window (when available) and a minimum of one (1) dust sample shall be taken from the floor of no less than four (4) rooms, hallways or stairwells within the containment area.

2. In addition, a minimum of one (1) dust sample shall be taken from the floor outside the containment area; or

3. When there are less than four (4) rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(b) After conducting an abatement with no containment, the number of samples and sites to be selected are as follows:

1. A minimum of two (2) dust samples shall be taken from every room in the residential dwelling or child-occupied facility.

2. A minimum of one (1) dust sample shall be taken from one (1) window (when available) and a minimum of one (1) dust sample shall be taken from the floor of each room; or

3. When there are less than four (4) rooms, hallways or stairwells within the residential area, then all rooms, hallways or stairwells shall be sampled.

(c) Following an exterior paint abatement, a visual inspection shall be conducted for compliance with the following conditions:

1. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris;

2. Paint chips or other painted debris shall not be present in the dripline area or next to the foundation below any exterior surface abated; and

3. When present shall be removed from the site and properly disposed of, according to all applicable federal, state and local requirements.

(7) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each dust sample, with applicable clearance levels for lead in dust as indicated in Section 10 of this administrative regulation. When the residual lead levels in a dust sample exceed the specified clearance levels, all the components represented by the failed sample shall be recleaned and retested until clearance levels are met.

(8) In a multifamily dwelling with similarly constructed and

maintained residential unit, random sampling for the purposes of clearance may be conducted provided:

(a) The individuals who abate or clean the residential dwelling do not know which residential dwelling will be selected for the random sample;

(b) A sufficient number of residential dwellings are selected for dust sampling to provide a ninety-five (95) percent level of confidence that no more than five (5) percent or fifty (50) of the residential units (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels; and

(c) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in Section 11 of this administrative regulation.

Section 9. Abatement Report. (1) An abatement report shall be prepared by a certified supervisor or project designer. The abatement report shall include the following information:

(a) Start and completion dates of abatement;

(b) The name and addresses of each certified supervisor assigned to the abatement project;

(c) The occupant protection plan prepared pursuant to Section 7(1)(d)4 of this administrative regulation.

(d) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(e) The results of clearance testing and all soil analysis (when the applicable) and the name of each recognized laboratory that conducted the analysis; and

(f) The abatement plan results - a detailed written description of the abatement, including abatement methods used, locations of rooms and components where abatement occurred, and reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulant or enclosures.

(2) A copy of the final abatement report shall be maintained by the certified individual or the abatement permit holder for the time period specified in Section 13 of this administrative regulation. In addition, a copy of the report will be submitted to the department within thirty (30) days after the completion of the abatement.

Section 10. Clearance Levels. The following levels are to be used as the clearance dust standards (wipe sampling only) for requirements under this administrative regulation.

| Surface | Level (ug/ft2) |
|--------------------------|----------------|
| Bare and carpeted floors | 100 |
| Interior Window Sills | 500 |
| Window Troughs | 800 |
| Exterior concrete | 800 |

Section 11. Collection and Laboratory Analysis of Samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards and procedures contained in this administrative regulation shall be:

(1) Collected by persons certified by the department as an inspector or risk assessor; and

(2) Analyzed by a laboratory recognized by EPA as being capable of performing analysis for lead compounds in paint chip, dust, and soil samples.

Section 12. Composite Dust Sampling. Composite dust sampling shall be conducted under the conditions specified in this administrative regulation. When this sampling is conducted, the following conditions shall apply:

(1) Composite dust samples shall consist of at least two (2) subsamples;

(2) Every component that is being tested shall be included in the

sampling; and

(3) Composite dust samples shall not consist of subsamples from more than one (1) type of component.

Section 13. Recordkeeping. All reports or plans required by this administrative regulation shall be maintained by the abatement permit holder or other certified individual who prepared the report for no fewer than three (3) years. The abatement permit holder or certified individual also shall provide copies of these reports to the building owner or other individual who contracted for the services.

Section 14. Abatement Permit Application and Clearance Procedures. (1) A certified individual shall make an application to the department, provide an abatement plan and pay the appropriate permit fee indicated in Section 15 of this administrative regulation.

(2) On receipt of the application, the appropriate information and fee, the department shall respond according to the time requirements indicated in 1996 Ky. Acts ch. 168.

(3) When the application is approved, the abatement services shall proceed. When an application is not approved a written notification of nonacceptance will be provided to the applicant. The applicant shall correct the unacceptable conditions of the application, accompanying information, or permit fee, indicated in notification by department before the abatement service is approved. The applicant then may resubmit the application according to the procedures specified in subsection (1) of this section.

(4) On completion of the abatement project the permit holder shall notify the department of the completion of the abatement services and clearance testing. The department shall conduct a quality assurance inspection of ten (10) percent of the abatement jobs for which permits issued, on a random basis. These inspections shall be conducted to determine compliance with state federal and local requirements. It is the responsibility of the abatement permit holder to provide access to the facility for quality assurance testing.

(5) The quality assurance inspection for the department shall be conducted by the department or its agent. The inspection and required sample collected shall be conducted in the same manner as specified under clearance review and sampling, required in post abatement clearance procedures in Section 8 of this administrative regulation.

(6) When the inspection findings of the department indicate that abatement levels of paint are found, or collected dust samples, exceed the clearance levels, all the components represented by the failed sample shall be recleaned, or otherwise lead hazard abated, and retested until clearance levels are met.

(7) The permit holder shall not begin construction and renovation activities after the abatement services are concluded, until the department reports to the permit holder that the abatement project passed the quality assurance inspection; or when the department fails to conduct the inspection within the time requirements in 1996 Ky. Acts ch. 168.

(8) The permit holder shall be responsible for paying a reinspection fee of \$100 for each reinspection required due to failure to pass the clearance levels.

Section 15. Permit Fee Schedule. The fee for an abatement permit shall be made under the following conditions to the department in the amount:

| Abatement in residential and child-occupied facilities | Fees |
|--|---|
| With containment | \$225 |
| Without containment | \$100 plus \$25 per potentially contaminated room |
| Exterior abatement | \$125 |

Section 16. Enforcement. Any person who violates the standards, procedures, or other requirements specified in this administrative regulation shall be subject to the enforcement and penalties specified 1996 Ky. Acts ch. 168.

Section 17. Administrative Hearings. When an administrative hearing is required under conditions which concern compliance with this administrative regulation, the hearing shall be conducted in accordance with 902 KAR 1:400.

RICE C. LEACH, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 27, 1996

FILED WITH LRC: October 1, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Nichols

(1) Type and number of entities affected: 1,000-2,000 in-state; 2,000-4,000 out-of-state (estimated) contractors, engineers, architects, construction workers, environmental health specialists, etc., who may desire certification to perform lead hazard detection and abatement services, and 20-30 accredited training providers (in-state and out-of-state).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: As regulation applies statewide, and affected individuals and training providers are currently engaged in similar work activities relative to construction, renovation and remodeling on a local, regional or statewide basis, there should be no change for in-state individuals. For out-of-state individuals, providing lead hazard detection and abatement services in Kentucky (or if training provider, providing training to individuals) may result in either costs or savings relative to their state of origin's costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: For in-state individuals and firms costs will increase for those who choose to become certified or who choose to become accredited as training providers. Cost increases involve receiving accredited training (or being accredited to train) by third-party training providers (actual costs will vary depending on level of training, training site location, etc.), and certification cost for initial application and annual renewal (based on discipline level of certification desired). For out-of-state individuals and firms cost increases would be the same as above, in addition to any costs imposed by any other state or local governmental agencies for permission to do business within their jurisdiction. For out-of-state training providers, accreditation costs would apply. Actual cost to an individual/firm to attain and maintain certification (or accreditation for trainers) and conduct business on an annual basis, is unknown due to start-up nature of the program and the highly variable nature of their specific circumstances.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Reporting and paperwork will increase for those individuals and firms who choose to become certified (or training providers seeking accreditation). Proof of training documents, initial application for certification form, and application for annual renewal, will be generated by all certification recipients; higher certification levels will also generate inspection/abatement plan reports, lab test reports, clearance reports, etc., directly related to the services they provide. Costs will only increase for those individuals and firms who desire certification; as only certified individuals and firms can provide lead hazard detection and abatement services, any competitor will also be subject to the same requirements. Training

providers must submit an application for accreditation and supportive documentation of federal EPA approved curricula. Actual costs are unknown at this time, but should be similar to other state regulated services which require licensing or certification of service or training providers.

2. Second and subsequent years: No change from above, other than initial application for certification or accreditation paperwork would not recur.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Program start-up costs for database development; forms/certificates; informational materials/program publicity; staffing; administration and enforcement are being covered by federal grant monies (2 yr. grant \$440,000), which results in a savings to the department.

2. Continuing costs or savings: Program operation beyond start-up should stabilize within 2-3 years as certified workforce levels attune to service volume. Fee collection should be sufficient to cover program cost by that time on a break-even basis.

3. Additional factors increasing or decreasing costs: None currently, although future federal mandates may warrant changes.

(b) Reporting and paperwork requirements: Will require setup and maintenance of a database for accredited training providers; certified service providers; status of abatement projects/testing and clearance status; creation of appropriate forms/educational materials; and quarterly/year-end reports to federal EPA on program status. Also will require liaison with surrounding states for reciprocity/enforcement activities.

(4) Assessment of anticipated effect on state and local revenues: For agency, should be revenue neutral; for other state/local agencies which collect taxes or fees for construction activities or sales of materials, it may have a positive impact.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Start-up source of funding is by federal grant, with ongoing funding by fees.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: See (b) below.

(b) Kentucky: Should have positive impact on local/state economy relative to goods and services common to residential construction/remodeling/renovation. If out-of-state certified individuals/firms provide service then local revenues from lodging/meals/etc., also would increase. Negative impact should be limited to owners of properties with lead hazards present, and the costs of detection/abatement activities. Once abated, however, property value increase should balance abatement cost.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Do nothing alternative - not feasible, as statutes mandate regulatory program; and, do-nothing allows lead poisoning hazards to remain a threat to public health. Delay or minimal program alternatives - not feasible, as statute sets timetable for implementation in one instance, and federal mandates establish acceptable state program to avoid federal takeover of state lead activities.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: As program is statewide, all areas should reap public health and environmental benefits. The detection and removal of lead hazards from target housing and child-occupied structures will prevent current and future generations of children (and their parents) from the damage of lead poisoning. Requiring providers of lead hazard detection and abatement services to meet standards of training and competency, and be subject to continuing education and performance scrutiny, assures the property owner that work will be properly done.

(b) State whether a detrimental effect on environment and public

health would result if not implemented: If not implemented, lead poisoning hazards for small children will remain which can result in permanent brain damage as well as other physical and mental effects. As to work being performed by certified providers, if work is not done properly it can result in a major increase in lead contamination and exposure to children and adults.

(c) If detrimental effect would result, explain detrimental effect: See above.

(9) 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:

(10) Any additional information or comments: Companion regulation to 902 KAR 47:080E and 47:090E.

(11) TIERING: Is tiering applied? No. Tiering was not used because performance standards must apply equally statewide for the same work. There is some inherent tiering within the standards relative to clearance levels after abatement work is done, and between lead abated situations and lead safe.

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. May relate to any local government which owns/operates target housing and/or child-occupied facilities.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Would affect only those local governments which own/ operate target housing and/or child-occupied facilities, and only that part of local government involved in the management/maintenance of such structures.

3. State the aspect or service of local government to which this administrative regulation relates. Rental of target housing units and operation of child-occupied facilities and their maintenance.

4. How does this administrative regulation affect the local government or any service it provides. Will require that lead hazards in the above structures be addressed only by properly trained and certified personnel (either local government staff or third party providers), and any mitigation or abatement work performed in compliance with state and federal regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 745; note that federal.

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

STATEMENT OF EMERGENCY

904 KAR 2:410E

This emergency administrative regulation is being amended to comply with 1996 Ky. Acts ch. 365 which implements the Family Support Act, the 1993 Omnibus Budget Reconciliation Act, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. As a result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, the Department for Social Insurance is no longer mandated to distribute

DEFRA payments to IVA/IVD clients as the federal government will no longer share in the cost of the distribution of DEFRA effective October 1, 1996. It is necessary to promulgate this emergency administrative regulation to prevent the possible loss of state general funds due to the change in PL 104-193. Concurrently, we will initiate the regular filing process providing opportunity for public comment. The administrative regulation shall also be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation will be filed with the Regulations Compiler for the October 15, 1996, filing.

PAUL E. PATTON, Governor

VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Division of Management and Development

904 KAR 2:410E. Child support collection and distribution.

RELATES TO: KRS 205.710-205.800, 403.215, 405.450, 405.465, 405.467, 405.490, 405.520, 45 CFR 302.32, 302.37, 302.38, 302.51-302.54, 302.60, 303.6, 303.100-303.102, 15 USC 1673(b)

STATUTORY AUTHORITY: KRS 186.570, 194.050, 205.710 to 205.800, 405.520, EO 96-862, 1996 Ky. Acts ch. 365, PL 104-193 [95-79]

EFFECTIVE: October 1, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer the Child Support Enforcement Program [~~(CSEP)~~] in accordance with KRS 205.710 to 205.800. KRS 205.712 provides for the child support agency to receive and process all child support payments. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children. This administrative regulation sets forth the procedures for collection and distribution of child support payments.

Section 1. Collection of Maintenance. Agency efforts shall include collecting maintenance if it meets the definition of "duty of support" in KRS 205.710(5).

Section 2. Methods of Collection. (1) Wage withholding.

(a) As specified in KRS 403.215, 405.465 and 405.467, the cabinet shall use this method:

1. As the primary tool for child support collection; and

2. As necessary to facilitate enrollment of a child through an employer in an available health insurance plan.

(b) For all cases, the child support agency shall provide for wage withholding without necessity of an amendment or court action to the child support order.

(c) If a noncustodial ~~(an absent)~~ parent has more than one (1) child support wage assignment against him, the child support agency shall allocate and distribute child support as specified by 1996 Ky. Acts ch. 365. ~~[amounts available for withholding, giving priority to the current child support obligation amount due each family.]~~

(d) If current support and an arrearage amount is owed and is to be paid through a wage withholding order, and no specified arrearage payment amount is ordered by the court, the cabinet shall determine the arrearage payment by multiplying the current court or administratively ordered obligation amount by twenty-five (25) percent.

(e) If the noncustodial ~~(absent)~~ parent no longer owes a current child support payment, the cabinet shall determine:

1. The arrearage payment to be equal to the last court or administratively ordered obligation amount; and [amount to be paid by wage withholding;]

2. The frequency of the arrearage payment, [i-and

3. ~~The arrearage payment to be equal to the last court or administratively ordered obligation amount.~~

(f) A noncustodial ~~[An absent]~~ parent shall not be obligated to pay current support when parental rights have been terminated or when all children of a particular order are emancipated.

(g) No amount of an employee paid share of the cost of health insurance shall be deducted if, after child support and maintenance are deducted:

1. The total monthly amount of health care coverage exceeds the Federal Consumer Credit Protection Act limits; or

2. Only a portion of the monthly amount needed to purchase health insurance is available.

(h) If amounts are improperly withheld, the cabinet shall promptly refund those amounts.

(i) To comply with the advance notice requirements of KRS 405.467(4), when the address of the noncustodial parent is known, the agency shall send written notification to [the agency shall notify] the noncustodial [absent] parent within fifteen (15) calendar days of the:

1. Request for wage withholding; or

2. The date the arrearage of the noncustodial parent is equal to the monthly obligation amount. [in writing that:]

(j) If the address of the noncustodial parent is unknown, the cabinet shall provide advance notice within fifteen (15) calendar days of locating the noncustodial parent.

(k) The advance notice shall inform the noncustodial parent:

1. He has ten (10) days to contest the withholding; and

2. Failure to contest the withholding within the specified time shall result in the child support agency notifying the employer within five (5) working days to begin withholding; and

3. Withholding shall apply to the current and any subsequent employer.

(l) ~~[(4)]~~ In addition to the requirements of KRS 405.467(5)-(11), the employer shall be notified, within fifteen (15) days of the request for wage withholding, of the following:

1. The employer shall forward collected child support amounts to the child support agency and collected medical insurance premiums to the health insurance carrier within ten (10) working days of the date the amount is withheld from the noncustodial ~~[absent]~~ parent's wages;

2. The employer shall include on the transmittal to the child support agency the name and Social Security number of the noncustodial ~~[absent]~~ parent, the child support agency assigned case number and the date the money was withheld;

3. The employer may combine amounts due the child support agency into one (1) payment if the employer identifies by the name, Social Security number, and the child support agency assigned case number the amount attributable to each noncustodial ~~[absent]~~ parent;

4. The employer shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed; and

5. The employer shall notify the child support agency promptly when the noncustodial ~~[absent]~~ parent terminates employment and provide information to the agency as required by 1996 Ky. Acts ch. 365.

(m) ~~[the following information:~~

a. ~~The absent parent's last known address; and~~

b. ~~The name and address of the new employer, if known.~~

(k) The noncustodial ~~[absent]~~ parent shall keep the child support agency informed of his current employer, if he has access to health insurance coverage at a reasonable cost, and the health insurance policy information.

(n) ~~[(4)]~~ The child support agency shall extend the withholding system to include withholding from wages derived in this state although the support order was issued by another state.

1. Within twenty (20) days of determining that withholding is appropriate for an interstate case, the initiating state shall notify the child support agency of the state where the noncustodial ~~[absent]~~

parent is employed to implement interstate withholding.

2. The notice shall contain:

a. The amount requested to be withheld;

b. The arrearage amount; and

c. A copy of the child support and medical support order.

3. The state where the support order was entered shall provide the information necessary for withholding within thirty (30) days of the receipt of the request.

4. The state of the employer of the noncustodial parent [absent parent's employer] shall:

a. Send notice to the noncustodial ~~[absent]~~ parent within fifteen (15) calendar days of locating the noncustodial ~~[absent]~~ parent or his employer;

b. Provide the noncustodial ~~[absent]~~ parent with the opportunity to contest the withholding; and

c. Send notice to his employer and to the noncustodial ~~[absent]~~ parent.

5. The child support agency shall notify the state in which the custodial parent resides when the noncustodial ~~[absent]~~ parent is no longer employed in the state and provide the state with both the noncustodial ~~[absent]~~ parent's and new employer's name and address, if known.

6. Except for when the withholding shall be implemented in the state where the support order is filed, the laws and procedures of the state where the noncustodial ~~[absent]~~ parent is employed shall apply.

(o) ~~[(4)]~~ The child support agency shall terminate wage withholding ~~[procedures]~~ when there is no longer a current order of support and all arrearages have been satisfied.

(2) Withholding of unemployment compensation.

(a) The child support agency, through an agreement with the state employment security agency, shall provide withholding of a child support obligation from a noncustodial ~~[an absent]~~ parent receiving unemployment compensation under the following conditions:

1. A noncustodial ~~[An absent]~~ parent who is delinquent and owes child support may voluntarily sign an agreement to withhold child support from unemployment compensation benefits.

2. The employment security agency shall commence withholding if:

a. An agreement is signed by the noncustodial ~~[absent]~~ parent; or

b. A notice of claim of intent to withhold is completed by the child support enforcement agency when the noncustodial ~~[absent]~~ parent fails to sign an agreement to withhold within fifteen (15) calendar days; and

c. No mistake in fact or law is proven which causes the noncustodial ~~[absent]~~ parent to be found not owing.

(b) Withholding of unemployment shall not exceed fifty (50) percent of the benefit amount unless:

1. Ordered by a court of competent jurisdiction; or

2. Requested by the noncustodial ~~[absent]~~ parent.

(3) Federal tax refund (offset).

(a) Past-due child support, medical support payments (if a specified dollar amount is included in the order) maintenance, and foster care related support shall qualify for offset if:

1. There is a court ordered or administratively established support obligation;

2. There has been an assignment of support to the child support agency;

3. The arrearage equals at least \$150 and shall have been delinquent at least three (3) months;

4. The arrearage shall be owed for a child or for a child and the parent with whom the child is presently living;

5. The child support agency shall determine the amount of the arrearage and have a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid.

6. The child support agency shall verify the accuracy of the noncustodial ~~[absent]~~ parent's name and social security number.

(b) Past due child support, medical support or maintenance in a nonpublic assistance case shall qualify for offset if:

1. There is a court ordered or administratively established support obligation and the child support agency is enforcing the order;

2. The arrearage shall be equal to no less than \$500 dollars and may not include fees, court costs, or any other non child support debt owed to the state or to the family;

3. The child support agency shall have verified the accuracy of the arrearage and have a copy of the support order, including modifications and a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid;

4. The arrearage shall be owed on behalf of a child who lives with the client and who is a minor as of December 31 of the year in which the case is submitted for offset;

5. The child support agency shall calculate an assigned arrearage;

6. The child support agency shall verify the accuracy of the noncustodial ~~[absent]~~ parent's name and social security number.

(4) State income tax refund (offset).

(a) An AFDC, foster care, or medical support arrearage which is owed by any person who is required to provide medical support for a child who is eligible for medical assistance (if a specified dollar amount is included in the order) related child support arrearage shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;

2. The noncustodial ~~[absent]~~ parent's name and social security number are known;

3. The arrearage is at least twenty-five (25) dollars; and

4. The arrearage has been verified as accurate.

(b) A nonpublic assistance support arrearage shall qualify for offset if criteria specified in Section 2(3)(b) of this administrative regulation is met and arrearages are not less than \$150.

Section 3. Aid to Families with Dependent Children (AFDC) Accounts Distribution. (1) A child support payment collected on behalf of a recipient of AFDC shall:

(a) Be made payable to the child support agency; and

(b) Be reported to the AFDC agency within ten (10) working days of the end of the month in which the support is received.

(2) A child support payment that makes the AFDC family ineligible for AFDC shall be reported to the child support agency by the AFDC agency.

(a) If the family is ineligible for an AFDC payment, the child support agency shall:

1. Distribute the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 904 KAR 2:380, Section 4(2).

(b) If the household remains eligible for an AFDC payment or if a hearing is requested:

1. The AFDC agency shall notify the child support agency; and

2. The child support agency shall distribute the collection as specified in Section 3(7) of this administrative regulation.

(3) A current payment that includes payment on a prior month obligation shall be distributed by the child support agency.

(4) A payment received in the month after ineligibility for AFDC is determined but prior to the last assistance payment being issued shall be used:

(a) To reimburse the state for any assistance paid; and

(b) To pay any excess to the family.

(5) If a hearing is requested and it is determined that the family is ineligible for an assistance payment, the child support agency shall:

(a) Determine the collected amount the family would have received; and

(b) Forward any amount in excess of the assistance payment to the family.

(6) If a hearing is requested and the family is determined to be eligible for an assistance payment, distribution of that month's child support collection shall be made.

~~[(7) The amount collected in a month on behalf of the AFDC family up to the first fifty (50) dollars shall be distributed to the AFDC family within fifteen (15) days of the date of initial receipt by the agency.]~~

~~(a) If the collected amount is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.~~

~~(b) If the collected amount exceeds fifty (50) dollars, only fifty (50) dollars shall be paid to an AFDC family receiving support.~~

~~(c) If the collected amount represents payments from two (2) or more absent parents, only the first fifty (50) dollars shall be paid to the AFDC family.~~

~~(d) If the amount collected represents a payment for a prior month and is received by the child support agency in the month it is due, up to the first fifty (50) dollars shall be paid to the family.~~

~~(e) If the amount collected represents a payment for a prior month and is received by the child support agency in the month in which it is due, but the collection is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.]~~

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Made payable to the child support agency; and

(2) Upon receipt by the child support agency, shall be disbursed to the foster care agency for distribution.

Section 5. Tax Refund Intercept. (1) Public assistance accounts.

(a) Amounts collected in public assistance cases shall be applied to assigned arrearages.

(b) If no assigned arrearages remain, the collections shall be forwarded to the AFDC family or foster care agency within thirty (30) calendar days of the date of initial receipt by the agency.

(c) If a timely appeal is filed by a noncustodial ~~[an absent]~~ parent and the appeal is resolved, payment shall be made to the family or refunded to the noncustodial ~~[absent]~~ parent within fifteen (15) calendar days of the resolution date.

(d) If a joint return has been filed, tax refund intercept collection shall be held by the child support agency for six (6) months prior to being distributed.

(2) Nonpublic assistance accounts. For a nonpublic assistance account, if no assigned arrearage remains, an amount collected which represents an arrearage amount shall be sent to the family within thirty (30) calendar days of the initial receipt date.

(3) If the noncustodial ~~[absent]~~ parent contests the accuracy of a past due amount, he may request an administrative review in accordance with specifications in 904 KAR 2:400, Section 4.

Section 6. Treatment of Excess Payments. (1) Collection of child support payments shall be applied to the required obligation amount for the month in which the support was collected.

(2) After the current obligation amount is satisfied, any excess amount shall be treated as payment on previous unpaid arrearage.

Section 7. Wage Withholding Distribution. (1) A child support or medical support payment made through wage or other withholding shall use the date the income is withheld for the date of collection for distribution to meet the support obligation.

(2) Distribution of wage withholding collections shall be made according to specification in Sections 3, 4, 6 or 8 of this administrative regulation.

Section 8. Interstate Case Payment Distribution. Child support payments that are collected by a responding state on behalf of an

initiating state shall be forwarded to the initiating state within fifteen (15) calendar days of initial receipt by the responding state.

(1) If the collected amount is less than fifty (50) dollars, the responding state shall send the amount collected to the location specified by the child support agency in the initiating state within fifteen (15) calendar days of the date of initial receipt in the responding state.

(2) The initiating state upon receipt of collection made by the responding state shall retain the collections to reimburse the assistance payment for the month it was received or the next month if the amount collected exceeds the required support obligation for the month and is in excess of the AFDC assistance payment.

(3) Collection of child support in the month after the month the family receives its last AFDC assistance payment shall be distributed and sent to the family within fifteen (15) calendar days of the date of initial receipt in the state.

Section 9. Additional Administrative Enforcement Remedies. (1) When the cabinet determines that the obligor owes an arrearage, the cabinet may implement administrative enforcement remedies listed below to collect the delinquent support amounts:

(a) Filing of liens on personal or real property when an arrearage is equal to or greater than one month's obligation;

(b) Report to credit bureaus; and

(c) Notifying the Transportation Cabinet to deny or revoke motor vehicle driver's license.

(2) The Cabinet for Families and Children shall:

(a) Provide information to credit reporting agencies as specified by KRS 205.768; and

(b) Provide [Within the context of the provisions of KRS 205.768, the Cabinet for Families and Children:

(a) Shall inform the credit reporting agency of a child support arrearage in each case referred for federal tax refund intercept; and

(b) May inform the credit reporting agency of a child support arrearage in any case which did not meet criteria for federal tax refund intercept because the parent's social security number is unknown.

(3) advance written notice to the noncustodial parent of the release of the information required by KRS 205.768(2) [shall be given to the absent parent in the preoffset letter of information concerning the federal tax refund intercept].

(c) The name of the noncustodial parent shall be:

1. Deleted from the list provided to credit report agencies when the advance notice is returned as undeliverable, and subsequent location efforts are unsuccessful; or

2. Added to the list provided to the credit reporting agencies when subsequent location efforts are successful.

[(4) An absent parent whose case shall not be certified for federal tax refund intercept but may be reported to a consumer reporting agency shall receive prior notice of the past due amount of child support and of the right to request an administrative review within thirty (30) days of the receipt of the notice.

(a) If the preoffset letter is returned and location services are unsuccessful, that individual shall be deleted from the list sent by the child support agency.

(b) If location services are successful, his name may be added to an updated list.

(c) An identifying list of absent parents is forwarded to the credit reporting agency the January following the certification year.]

(3) [(6)] Denial or suspension of driver's license.

(a) The cabinet shall as provided by KRS 186.570(2); [As a remedy of last resort when all other civil remedies either do not apply or have been tried and have failed, including judicial remedies, the cabinet shall:]

1. Identify a case with a verified arrearage equal to one (1) year's obligation amount which accrued beginning January 1, 1994, or thereafter; and

2. Contact the contracting official to determine if the contracting official intends to pursue judicial action.

3. If the contracting official determines that judicial action will not be taken, advise the contracting official of the intent of the agency to proceed with the referral to revoke or deny a driver's license.

4. [2-] Send by first class mail to a noncustodial [an absent] parent who holds a valid Kentucky driver's license and who has the ability to pay support:

a. A notice of intent to request denial or suspension of a driver's license; and

b. A noncustodial [An absent] parent answer to notice of intent.

3. Notify the noncustodial [absent] parent that the only basis for resolution of the dispute shall be:

a. The arrearage is incorrect and does not equal or exceed the amount of support owed for one (1) year;

b. The wrong individual has been identified;

c. A bond is posted for the total arrearage which has accrued since January 1, 1994;

d. A payment agreement is entered into by the noncustodial [absent] parent to pay current support, plus a specified monthly payment amount on the total arrearage which has accrued since January 1, 1994. The monthly payments shall be:

(i) Fifty (50) percent if the arrearage owed is less than \$1,000; or

(ii) \$500 plus twenty-five (25) percent of the amount over \$1,000 if the arrearage is not less than \$1,000 and not greater than \$2,000; or

(iii) \$750 plus ten (10) percent of the amount over \$2,000 if the arrearage is \$2,000 or more; or

e. The noncustodial [absent] parent pays the total arrearage which has accrued since January 1, 1994.

(b) To assure delivery of the notice of intent, the cabinet shall refer the case for parent locator service if the notice is returned and the forwarding address is unknown;

(c) If the noncustodial [absent] parent requests a dispute hearing by contesting the arrearage based upon a mistake of fact and returns the noncustodial [absent] parent answer to notice of intent form within twenty (20) calendar days of the notification date, the cabinet shall:

1. Within ten (10) working days of the noncustodial [absent] parent's response, schedule and hold an interview with the noncustodial [absent] parent;

2. Attempt to resolve the dispute at the time of the interview; and

3. Forward the noncustodial [absent] parent's written request for a hearing to the agency responsible for conducting the dispute hearing.

(d) The child support agency shall inform the agency responsible for conducting the hearing that:

1. A resolution has been reached as a result of the interview and a written request from the noncustodial [absent] parent to withdraw the hearing request shall be sent; or

2. A resolution to the dispute has not been reached and the hearing request remains in effect.

(e) Upon the decision made by the agency conducting the hearing, and within twenty (20) calendar days of the hearing officer's decision, the child support agency shall notify the Transportation Cabinet of the request for the denial or suspension of the driver's license, unless:

1. The noncustodial [absent] parent makes full payment of the total arrearage that may have accrued since January 1, 1994;

2. The noncustodial [absent] parent enters into a payment agreement to pay current support, plus the specified amount on the total arrearage which accrued since January 1, 1994 as determined by paragraph (a)3d of this subsection; or

3. The noncustodial [absent] parent posts a bond for the total arrearage which has accrued since January 1, 1994.

(f) If the case does not qualify for submittal to the Transportation Cabinet, a notice to deny or suspend the driver's license shall not be sent.

(g) If the noncustodial [absent] parent does not contest the arrearage or after the interview and hearing process, the case qualifies for submittal to the Transportation Cabinet, the Cabinet for Families and Children shall refer the name of the noncustodial [absent] parent to the Transportation Cabinet for the denial or suspension of the driver's license, unless:

1. The noncustodial [absent] parent makes full payment of the arrearage within twenty (20) calendar days of the interview by the Cabinet for Families and Children;

2. The noncustodial [absent] parent posts a bond within twenty (20) calendar days of the interview for the total arrearage which accrued since January 1, 1994; or

3. The noncustodial [absent] parent enters into a payment agreement to pay current support, plus the specified amount on the total arrearage which has accrued since January 1, 1994 as determined by paragraph (a)3d of this subsection.

(h) The Cabinet for Families and Children shall notify the Transportation Cabinet to reinstate or reissue a previously suspended or revoked driver's license if:

1. The noncustodial [absent] parent makes full payment of the arrearage;

2. The noncustodial [absent] parent posts a bond for the total arrearage amount; or

3. The noncustodial [absent] parent:

a. Makes a good faith payment which equals three (3) months' current support; and

b. Enters into a payment agreement to pay the specified amount on the remaining arrearage which has accrued since January 1, 1994 as determined by paragraph (a)3d of this subsection.

Section 10. Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.490 or 405.450 as described in 904 KAR 2:400, Section 4.

Section 11. Material Incorporated by Reference. (1) Forms necessary for the collection and distribution of child support and medical support are incorporated effective February 15, 1995. These forms include:

(a) CS-111, revised 5/89;

(b) CS-63, issued 2/95;

(c) CS-78, revised 5/89;

(d) CS-44, issued 2/95;

(e) CS-148, revised 10/93;

(f) CS-149, revised 10/93;

(g) CS-122, revised 7/96 [7/94];

(h) CS-123, revised 7/96 [7/94].

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: September 30, 1996

FILED WITH LRC: October 1, 1996 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This administrative regulation sets forth the procedures for collection and distribution of child support payments. This regulation will include the procedures by which the denial or suspension of drivers' licenses will occur when a child support arrearage of one year accumulates beginning January 1, 1994, the distribution of wage withheld child support obligations, and credit bureau reporting procedures. This will affect any obligor having an arrearage of one (1) year's amount, beginning January 1, 1994. Additionally, the removal of the mandate to pass through the

first \$50 of child support is being deleted as a result of PL 104-193. A regular administrative regulation will be promulgated to replace this emergency regulation. Collections to IVA/IVD clients will effect approximately 12,000 cases.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. To be determined after the publication of the notice of intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. To be determined after the publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First Year following implementation: An increase in paperwork will be realized by child support offices and legal representatives. No additional costs should be incurred by the clients.

2. Second and subsequent years: An increase in paperwork will be realized by child support offices and legal representatives. No additional costs should be incurred by the clients.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Failure to eliminate the DEFRA mandate by PL 104-193, will result in a yearly state cost of \$6.0 million to the cabinet. The following is a result of the denial or revocation of driver's license:

1. First Year: 1997

| | |
|--------------------------------------|-----------|
| 5 staff and related cost | \$156,400 |
| 2 hearing officers and related costs | 62,600 |
| System costs | 84,000 |
| Policy costs | 46,900 |
| New form cost | 1,000 |
| Postage | 2,100 |
| Total | \$353,000 |

2. Continuing costs or savings: 1998

| | |
|--------------------------------------|-----------|
| 5 staff and related cost | \$164,300 |
| 2 hearing officers and related costs | 65,800 |
| Forms | 1,500 |
| Postage | 2,200 |
| Total | 233,800 |

3. Additional factors increasing or decreasing costs:

(a) It is anticipated collections will increase as a result of driver's license revocation. The additional collections retained by the state is anticipated to be \$385,200. If these projections hold, the collections will offset the cost by SFY 1998. Failure to remove the DEFRA mandate by PL 104-193 will result in a yearly state cost \$6.0 million to the cabinet.

(b) Reporting and paperwork requirements: An increase in paperwork will be realized by child support offices and legal representatives.

(4) Assessment of anticipated effect on state and local revenues: Failure to remove the DEFRA mandate by PL 104-193 would result in a yearly state cost of \$6.0 million to the cabinet.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funding-66%; agency funding-34%.

(6) To the extent available from public comments received, economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the notice of intent.

(b) Kentucky: To be determined after the publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Regulatory

amendments were developed in order to harmonize with statutory language. The elimination of the DEFRA (pass through) payments to the IVA/IVD was an option to the state chosen by the state due to the lack of federal funding match for this payment.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The implementation of the provisions as identified will provide an easier and more efficient method of determining paternity and therefore providing the basis for the collection of child support.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 303.21; 45 CFR 303.105; 45 CFR 303.107; 45 CFR 302.34; PL 104-193.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation provides requirements of the child support agency in the collection and distribution of child support payments.

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 standards, or additional or different responsibilities or requirements. None

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. This regulation contains new services and new requirements of the contracting officials, and therefore does affect local governments by requiring additional administrative work in the collection of child support and medical support payments.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the collection of child support payments and medical support payments for the child support enforcement program by contracting officials.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide for possible modification of child support orders and for modification of orders to collect medical support/insurance orders.

ADMINISTRATIVE REGULATIONS AMENDED BY REVIEWING SUBCOMMITTEE AND PROMULGATING AGENCY

COMPILER'S NOTE: The following administrative regulations were amended by the Administrative Regulation Review Subcommittee and the promulgating agency on October 7, 1996, unless otherwise noted.

FINANCE AND ADMINISTRATION CABINET Office of the Secretary (As Amended)

200 KAR 5:302. Delegation of authority.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.035, 45A.045(3), 45A.050(5)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is required by KRS 45A.035 where the Secretary of the Finance and Administration Cabinet delegates purchasing authority to any other agency. It will provide uniformity for all delegations of authority by the Finance and Administration Cabinet and help to ensure the competency of the agency receiving the authority over the proposed delegated area. The administrative regulation will also help to ensure that the agency receiving the authority follows all requirements of KRS Chapter 45A. In addition, this administrative regulation will set out the requirements for the Secretary of the Finance and Administration Cabinet to waive the small purchase limitations pursuant to KRS 45A.100. This administrative regulation includes the substance of the administrative regulation to be repealed, 200 KAR 5:301.

Section 1. Delegations of Authority Other than for Small Purchases. A secretary's order may delegate Finance and Administration Cabinet authority pursuant to KRS 45A.045(3).

(1) A government agency requesting a delegation from the Finance and Administration Cabinet under KRS 45A.045(3) shall submit the following in writing to the secretary:

(a) A statement that the agency will comply with all applicable laws, administrative regulations and Finance and Administration Cabinet policies and procedures.

(b) Proof of competency in the proposed delegated area demonstrated by staff experience and training and the resources available to the agency to perform the purchase delegation.

(2) The secretary's order shall specify the authority the agency shall receive, the purpose for which the delegation is given, and the period of time for which the delegation is valid.

(3) Any agency receiving such delegation shall comply with the provisions of KRS Chapter 45A and all other purchasing statutes, administrative regulations, policies and procedures of the Finance and Administration Cabinet.

(4) Each agency receiving a delegation shall certify annually to the secretary that it is in compliance with all purchasing laws, administrative regulations and policies. This certification shall be filed with the secretary on or before January 1, 1997 and thereafter on July 1 of each year, including July 1, 1997.

(5) All standing delegations of purchasing authority by the secretary shall remain in force according to the original terms thereof unless modified, or until rescinded by the secretary.

(6) Delegations of purchasing authority for an agency's individual requirements, or to authorize procurement activities by an agency for preestablished and limited periods of time may be granted as appropriate with regard to the procurement activity or function by the Commissioners of the Departments for Administration and Facilities Management or their designees by letter setting forth with particularity

the kind and type of procurement activity or function authorized by the delegation and fixing the limits and restrictions or the exercise of the delegation and its duration. No such delegation of purchasing authority shall be extended or renewed except with the written approval of the Secretary of the Finance and Administration Cabinet.

Section 2. Small Purchase Delegation Exceeding an Agency's Statutory Small Purchase Limit Under KRS 45A.100. The Secretary of the Finance and Administration Cabinet may delegate purchasing authority that exceeds the agency's small purchase limit set out in KRS 45A.100 by secretary's order. These standing delegations shall set forth with particularity the kind or type of procurement activity or function delegated together with any limitations or restrictions on the exercise of such authority.

(1) An agency request for small purchase delegation above the limits established in KRS 45A.100 shall be submitted to the secretary, shall be signed by the agency head submitting the request and shall supply the following information:

(a) The total dollars spent each of the two (2) preceding fiscal years under the agency's existing small purchase authority and the number of small purchase transactions represented by those dollar figures for each fiscal year.

(b) A description of the agency's organizational structure which must demonstrate that the placement of the procurement function is appropriate to the agency's size and procurement needs.

(c) A description of the agency's internal controls, which shall ensure adequate safeguarding of assets and the segregation and separation of duties, particularly the separation of purchasing, accounting, and receiving functions.

(d) Documentation that the agency has prepared and implemented a plan to identify and utilize small and minority-owned suppliers for small purchases. The agency's future goals in this respect shall be reported, with a goal of five (5) percent utilization being the minimum. An action plan showing how the agency plans to reach its goals shall be included. The agency shall be prepared to report its progress toward meeting that goal upon the secretary's request.

(e) The agency shall acknowledge that it is aware of, and in compliance with, the provisions of KRS 45A.500 and 200 KAR 5:330 relating to recycled material content products.

(f) Every record of control weakness or noncompliance relating to procurement practices issued to the agency by the Auditor of Public Accounts, internal auditors, or the Finance Divisions of Purchases or Contracting and Administration, for each of the past two (2) fiscal years and the agency's response to the finding. All such records of control weakness or noncompliance shall be addressed in the agency's request and any corrective measure taken shall be to the satisfaction of the Secretary of the Finance and Administration Cabinet.

(g) A list of the agency's procurement personnel, below the level of Branch Manager, to whom the agency will give signature authority for purchases at the requested higher small purchase limits and their professional purchasing certification or training. Such persons shall, within one (1) year after the granting of the delegation or within one (1) year of employment in government in a procurement position, whichever is sooner, have completed a course in purchasing offered by the Finance and Administration Cabinet's Division of Purchases and Division of Contracting and Administration, or the introductory course in purchasing offered by the National Institute of Governmental Purchasing or an equivalent course offered by the National Association of Purchasing Management.

(2) The requesting agency shall utilize each on-line function of the Kentucky Automated Purchasing System that has been offered to the

agency by the Divisions of Purchases or Contracting and Administration.

(3) The Divisions of Purchases and Contracting and Administration may perform or request the performance of periodic procurement audits of the agencies to which small purchase delegation above the limits established in KRS 45A.100 has been granted. Such audits shall investigate an agency's compliance with the provisions of KRS Chapter 45A, purchasing administrative regulations and the Finance and Administration Cabinet Manual of Policies and Procedures. If an agency demonstrates deficiencies in procurement expertise or practice, the divisions shall recommend that the secretary revoke or amend any delegations granted under this administrative regulation. Authority shall not be extended or renewed except with the written approval of the secretary.

Section 3. 200 KAR 5:301. Delegation of purchasing authority, is hereby repealed.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 4 p.m.

FINANCE AND ADMINISTRATION CABINET
Department for Administration
Division of Purchases
(As Amended)

200 KAR 5:306. Competitive sealed bidding.

RELATES TO: KRS 45A.080

STATUTORY AUTHORITY: KRS 45A.035, 45A.080

NECESSITY, FUNCTION, AND CONFORMITY: The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). (The Secretary of the Finance and Administration Cabinet is authorized by KRS 45A.055 to publish state purchasing administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements the provisions of KRS 45A.080. This administrative regulation is amended to more clearly state that this administrative regulation pertains only to those contracts exceeding the small purchase limits established by KRS 45A.100. These amendments also change the reference to "bidders' list" to "source list" and "purchasing official" and "buyer" to "purchasing officer." These amendments further provide that only those late bids postmarked prior to the scheduled opening date shall be considered for award, and that facsimile bids and responses shall not be accepted by the Division of Purchases. These amendments make revisions to bring the administrative regulation into compliance with the drafting rules established under KRS Chapter 13A.)

Section 1. (1) The purchasing agencies of the Commonwealth shall cause adequate public notice of invitations for bids pursuant to [for furnishing procurement requirements of the Commonwealth and its agencies through newspaper advertisement in the manner set forth in] KRS 45A.080(3).

(2) For those contracts estimated to exceed \$25,000, adequate public notice shall include publication of a notice in either or both the Louisville and Lexington daily newspapers not less than seven (7) days prior to the date set for the opening of bids.

(3) The agencies shall transmit [and shall solicit bids from interested persons listed on the source lists for particular requirements by sending] invitations for bids not less than fourteen (14) days prior to the date set for the opening of bids, to prospective vendors.

(4) An agency shall transmit an invitation for bid by:

(a) Sending a hard copy to at least ten (10) persons listed in a source list for the item that is the subject of the invitation for bid; or

(b) If less than ten (10) persons are listed in the source list, to all persons listed in the source list; or

(c) Electronically upload an invitation for bid to the electronic Vendor Information Program Bulletin Board System operated by the Division of Purchases, Finance and Administration Cabinet, if it has been determined by the Director, Division of Purchases, that reasonable access to the Vendor Information Program Bulletin Board System is available to potential bidders. [The agencies shall transmit invitations for bids by either sending a hard copy to at least ten (10) persons listed in such source lists, and if less than ten (10), all potential bidders listed in the source lists as interested in supplying the particular requirement; or agencies may electronically upload bid invitations or notices of invitations to the electronic Vendor Information Program bulletin board system operated by the Division of Purchases, Finance and Administration Cabinet.] [If there are not ten (10) persons listed on a particular source list, invitations shall be sent to all persons listed on that particular list.]

Section 2. (1) A bid shall comply with the instructions contained in the invitation for bid.

(2) A bidder shall submit a signed bid on the form furnished by the purchasing agency. [Bidders shall complete, execute and submit their bids in strict compliance with the instructions contained in the invitation for bids. Bid forms shall be provided by the purchasing agencies in paper or electronic format and a bidder responding to an invitation for bids shall use only the bid form or form of proposal furnished by the purchasing agency in submitting his bids.]

Section 3. Bidders shall submit their bids at the place and at, or prior to the date and hour set in the invitation for bids. Bids received after the hour set for opening bids shall be marked late ~~[are late bids and shall be so marked]~~. A late bid shall not be considered for an award unless no other bid is received in response to an invitation for bids. The late bid, together with the envelope in which the bid was submitted bearing the stamped date and hour of receipt of the bid, shall be retained in the invitation for bids file ~~[pertaining to the invitation for bids]~~. Only those late bids postmarked prior to the scheduled opening date shall be considered for award.

Section 4. All bids, and any modifications to bids previously filed, received prior to the date and hour fixed for opening bids shall be kept secure and unopened. Envelopes containing bids but not marked to indicate that they contain a bid and listing the invitation for bids number and the date and hour of opening bids for that invitation may be opened to identify ~~[for the purpose of identification of]~~ the contents of the envelope and shall [will] be marked and resealed.

Section 5. The purchasing officer or other employee of the purchasing agency designated to open the bids shall determine when the time set for opening bids has arrived and shall so declare the time to those present for the bid opening. He shall then and there personally, in the presence of the bidders or their representatives and anyone else who may wish to attend the bid opening, open all bids received as of that date and hour; when practical, the names of the bidders and the amounts of their bids may be read aloud to the persons present. Except where it may be deemed impractical, ~~[it may be deemed impractical]~~ a bid tabulation summary sheet shall be prepared for each invitation for bids recording the name of each bidder, a description of the supplies or services bid and the amounts of the bids received. The bid tabulation summary sheet shall be permanently retained in the file pertaining to that invitation for bids and shall be available for public inspection. Inspection of bids by interested persons shall not be permitted ~~[or authorized]~~ during the formal bid

opening process.

Section 6. The bids shall be examined by the purchasing officer responsible for the procurement for any clerical or technical errors, reviewed for technical compliance with the terms of the invitation for bids, and the supplies or services bid evaluated for conformity with the specifications contained in the invitation for bids. Every bidder shall, when requested by the purchasing officer responsible for the particular procurement, clarify ~~[or explain]~~, in writing, any matter contained in his bid about which the purchasing officer may have question or believes in good faith needs to be clarified ~~[and explained]~~. The bid of any bidder who fails or refuses, within a reasonable time, to give a written clarification ~~[or explanation]~~ of his bid, or any part thereof, when requested to do so by the purchasing officer, shall not be considered further for an award on the basis of that invitation for bids. The written clarification ~~[or explanation]~~ of a bid, or a part of a bid, shall be incorporated in ~~[and become a part of]~~ any contract awarded on the basis of that bid. ~~[In due course, and]~~ After a reasonable bid evaluation period, the contract shall be awarded to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price, whichever is determined by the purchasing officer to be in the best interests of the Commonwealth or as designated in the invitation for bids as the basis for award of the contract. ~~[If]~~ After evaluation of the bids, including consideration of any clarifying ~~[or explanatory]~~ information submitted by the bidders, ~~the purchasing officer may determine [it is determined by the purchasing officer]~~ that no satisfactory bid has been received and ~~[]~~ all bids may be rejected. At ~~[and, in]~~ the discretion of the purchasing officer, the invitation for bids may be cancelled and ~~[]~~ new bids invited on the basis of the same or revised specifications, or competitive negotiations undertaken for the procurement. The basis for the rejection of all bids and subsequent action taken or to be taken with respect to the invitation for bids shall be recorded in writing and filed in the invitation for bids file relating to the particular procurement.

Section 7. (1) The right to reject any ~~[and all]~~ bid~~s~~ and to waive technicalities and minor irregularities in bids shall be ~~[maintained and]~~ preserved in the case of all invitations for bids issued by purchasing agencies within the Finance and Administration Cabinet or pursuant to delegations of purchasing authority by the Finance and Administration Cabinet.

(2) Grounds for the rejection of bids include :

(a) Failure of a bid to conform to the essential requirements of an invitation for bids.

(b) Any bid which does not conform to the specifications contained or referenced in any invitation for bids shall be rejected unless the invitation authorized the submission of alternate bids and the items offered as alternatives meet the requirements specified in the invitation.

(c) Any bid which fails to conform to a delivery schedule established in an invitation for bids.

(d) A bid imposing conditions which would modify the terms and conditions of the invitation for bids, or limit the bidder's liability to the state on the contract awarded on the basis of such invitation for bids.

(e) Any bid determined by the purchasing officer in writing to be unreasonable as to price.

(f) Bids received from bidders determined to be not responsible bidders.

(g) Failure to furnish a bid guarantee when required by an invitation for bids.

(h) For other cause as documented by the purchasing officer pursuant to a written determination and finding.

(3) Technicalities or minor irregularities in bids which may be waived when the purchasing officer determines that it will be in the Commonwealth's best interest to do so, are mere matters of form not affecting the material substance of a bid or some immaterial deviation

from or variation in the precise requirements of the invitation for bids and having no or a trivial or negligible effect on price, quality, quantity or delivery of supplies or performance of the services being procured, the correction or waiver of which will not affect the relative standing of, or be otherwise prejudicial to other bidders. The purchasing officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in his bid, or waive such deficiency where it is advantageous to the Commonwealth to do so.

Section 8. Where a mistake in a bid is claimed, and the evidence is clear and convincing that a material mistake was made in the bid and that due to such mistake, the bid submitted was not the bid intended, the bidder may be permitted to withdraw his bid. It shall be the duty of all contractors bidding to carefully review and verify the accuracy of their bids both before submitting them and prior to execution of a contract. When a mistake in a bid is claimed after the award and execution of a contract, on the basis of such bid, the contractor shall be required to perform according to the terms and conditions of the contract unless it is established by clear and convincing evidence that a material mistake had been made in the original bid and that the contractor would sustain a financial loss if required to perform the contract according to its terms; a reduction or diminution in profit margin shall not be deemed a financial loss under this section. Where the evidence is clear and convincing that a material mistake has been made in a bid after the award of a contract, and the contractor will sustain a financial loss if required to perform the contract, the contract shall be rescinded and the contractor shall be ineligible to submit a bid upon readvertisement for the commodity or service.

Section 9. The following matters shall apply ~~[be applicable]~~ to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities, supplies and equipment pursuant to KRS 45A.080 and this administrative regulation:

(1) Time discounts or cash discounts shall not be considered.

(2) ~~[Trade discounts.]~~ Trade discounts shall ~~[should]~~ be deducted by the vendor in calculating the unit price quoted, unless otherwise indicated in the bid.

(3) ~~[Quantity discounts.]~~ Quantity discounts shall be included in the price of the item. When not included in the item price, the discount shall be considered only if the purchasing agency deems it to be in the Commonwealth's best interests. The unit price shown on the contract shall be the net price, less the discount, unless otherwise indicated in the bid.

(4) ~~[Unit prices.]~~ In case of a discrepancy in the extension of a price, the unit or item price shall govern over the total price of all items.

(5) ~~[Awards on an aggregate or individual item basis.]~~ An award may be made to the lowest aggregate bidder for all items, group of items, or on an individual item basis, whichever is deemed to be in the Commonwealth's best interest. The methods and bases of award of contract and of evaluation of bids shall be stated in the invitation for bids.

(6) ~~[Telegraphic or facsimile bids.]~~ When the purchasing agency has invited competitive sealed bids or request for proposals, telegraphic or facsimile responses shall not be accepted.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: August 13, 1996

FILED WITH LRC: August 14, 1996 at 4 p.m.

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis
(As Amended)

200 KAR 15:010. Formula for allocation of private activity bonds.

RELATES TO: KRS 103.200(1)(k), (m), (n), (2), 103.2101, 103.286 [Chapter 103]

STATUTORY AUTHORITY: KRS 103.286(3), 26 USC Sec. 146
 NECESSITY AND FUNCTION: ~~[Pursuant to KRS 103.286, the Kentucky Private Activity Bond Allocation Committee shall attempt to allocate the state ceiling for the issuance of private activity bonds of Kentucky in order to foster economic development within the Commonwealth and promote the general welfare of its citizens and the public purposes of the Commonwealth.]~~ KRS 103.286(3) provides that the Secretary of the Finance and Administration Cabinet ~~[(as Chairman of the Kentucky Private Activity Bond Allocation Committee)]~~ shall promulgate administrative regulations ~~[in accordance with KRS Chapter 13A]~~ to provide for the allocation of the state ceiling for the issuance of private activity bonds ~~[among all issuers of such bonds within the Commonwealth of Kentucky]~~. This administrative regulation establishes the formula for that allocation. ~~[by which state ceiling for the issuance of private activity bonds will be allocated.]~~

Section 1. Definitions. For the purposes of this administrative regulation:

(1) "Affected bonds" means "private activity bonds" as defined by 26 USC sec. 146 [in the Internal Revenue Code of 1986, as amended by 26 USC sec. 146, et seq. (the "Code")], excluding any ~~[such]~~ obligations not subject to the state ceiling under the Code;

(2) "Bonds", see KRS 103.200(2); ~~[means bonds, notes and other like obligations;]~~

(3) "Committee" means the Kentucky Private Activity Bond Allocation Committee;

(4) "Issuer" or "issuing authority" means the public or authorized governmental body which issues the bonds;

(5) "Issued" means delivered and paid for;

(6) "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency;

(7) "Local project" means a project for which bonds are issued on behalf or for the benefit of an entity which is not a state agency;

(8) "Single issuer pool" means the portion of the state ceiling from which allocations are made to any issuer;

(9) "Staff" means the Office of Financial Management and Economic Analysis of the Finance and Administration Cabinet.

(10) "State ceiling" means the cap imposed by 26 USC sec. 146 [Section 146 of the Code] on private activity bonds issued within the Commonwealth of Kentucky;

(11) "State issuer pool" means the portion of the state ceiling from which allocations for state projects are made to issuers of affected bonds issued on behalf or for the benefit of a state agency;

(12) "State project" means a project for which bonds are issued on behalf or for the benefit of a state agency; and

(13) "Year" shall mean calendar year.

Section 2. Allocation of State Ceiling for Private Activity Bonds. ~~[(4)]~~ On January 1st of each year, the state ceiling for private activity bonds shall be divided into two (2) separate pools;

~~[(1) [a state issuer pool and a local issuer pool.]~~ Sixty (60) percent of the state ceiling shall be reserved in a local issuer pool until October 1st. On October 1st, the remainder of any unallocated portion of the state ceiling shall revert to a single issuer pool.

~~[(2) [for the local issuer pool and]~~ Forty (40) percent of the state

ceiling shall be reserved for a [the] state issuer pool until July 1st. On July 1st, the remainder of any unallocated portion of the state ceiling shall revert to the single issuer pool. ~~[On and after July 1 of each year, any remaining unallocated portion of the state ceiling in the state issuer pool shall revert to the single issuer pool. On October 1 of each year, any remaining unallocated state ceiling in the local issuer pool shall revert to the single issuer pool. On and after October 1 of each year, any remaining unallocated portion of the single issuer pool shall be allocated on a first come, first served basis, subject to the limitations of KRS 103.286(2)(a).]~~

Section 3. Allocations For Local Projects. Prior to October 1 ~~[of any year]~~ the committee shall not allocate a portion of the state ceiling for any project in an aggregate principal amount greater than ten (10) percent of the amount of the local issuer pool.

Section 4. Evaluation of Local Projects. Local projects seeking allocation from the state ceiling prior to October 1 shall be evaluated by the committee using the following criteria:

(1) Creation of new jobs, as well as preservation of existing jobs, by the project;

(2) Average salary per employee proposed for the project;

(3) Capital investment in Kentucky being made as a result of the project;

(4) Unemployment rate in the county of the project;

(5) State economic development incentives awarded to the ~~company [pre]ject~~, if any;

(6) Previous private activity bond cap allocated to the company.

Section 5. Committee Meetings. The committee shall meet at least quarterly to allocate the state ceiling. Special meetings may be held on the call of the committee chairman.

Section 6. A confirmation authorizing the issuance of affected bonds shall be obtained by the issuer filing with the committee a written notice of intention to issue bonds ("notice of intent" form). Obtaining Confirmations in Advance-notice of Intent. The committee shall issue a confirmation ("Confirmation of Allocation of State Ceiling" form) allocating to the issuer a portion of the state ceiling equal to the amount of the bonds proposed to be issued. ~~[Ne]~~ Affected bonds shall not be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. ~~[A confirmation authorizing the issuance of affected bonds shall be obtained by the filing by or on behalf of the issuer with the committee of a written notice of intention to issue such bonds (the "notice of intent").]~~ Confirmations shall be dated and numbered in the order issued ("Notice of Issuance" form).

Section 7. Notice of Issuance. Original Confirmation Effective for Ninety (90) Days. A confirmation shall expire ninety (90) calendar days from the date of issuance by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued. The notice of issuance may be sent by any means but it shall be received by ~~[shall be transmitted by means the issuer may select, but shall be sent in time sufficient to allow the notice to reach]~~ the committee by the close of business on the 90th day after the confirmation. If the [such] period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

Section 8. Renewal of Confirmation Period. (1) If the bonds are not issued within the ninety (90) day confirmation period, the issuer may seek a renewal of confirmation for all or any part of the project described in the original notice of intent;

(2) The issuer may seek renewal by filing a new notice of intent;

(3) The issuer shall wait a period of thirty (30) days after expiration of the original confirmation period before filing the new notice of intent;

(4) The committee shall review the new notice of intent and may grant a renewal confirmation which shall be valid for a period of thirty (30) days. [Subsequent Renewals. Thirty (30)-Day Waiting Period. If the applicable bonds are not issued within such ninety (90)-day period no new notice of intent for a project consisting of all or any part of the project described in any prior notice of intent may be filed until the expiration of thirty (30) days following the expiration of the last confirmation. If so filed, the confirmation issued upon such new notice of intent shall expire thirty (30) days after the date of such subsequent confirmation.]

Section 9. Supplementary Confirmation for Excess Amounts Required. If the amount of affected bonds proposed to be issued is insufficient to pay the costs of the proposed project, an issuer may file with the committee a supplementary notice of intention to issue additional bonds. The committee shall confirm the supplementary notice of intention to issue bonds[~~—if any,~~] by a supplementary confirmation. The supplementary confirmation shall expire on the date of the confirmation that it supplements.

Section 10. Issuance of Bonds in Lesser Amounts than Confirmation. Eighty-five (85) Percent Requirement. A confirmation of affected bonds shall be effective if issued in amounts less than the confirmed amount; provided, that the face amount of the issued bonds is not less than eighty-five (85) percent of the original confirmed amount. [~~as to affected bonds issued in amounts less than the confirmed amount, provided that the face amount of the bonds issued is not less than eighty-five (85) percent of the confirmed amount of the affected bonds.~~] The issuer shall notify the committee if the bonds issued are within the eighty-five (85) percent limit [limits expressed herein] and the unused part of the allocation shall revert to the issuer pool from which the allocation was made, or to a single issuer pool after July 1 of any year.

Section 11. (1) If the aggregate amount of private activity bonds issued during the year does not exceed the state ceiling, an issuer may, in order to carry forward to the next year, file with the committee by December 31st:

(a) A "notice of intent" ("Notice of Intent" form); and

(b) A "carry forward election of unused private activity bond volume cap" (U.S. Treasury Department Form 8328).

(2) The carry forward of any unallocated portion of the state ceiling may be for any purpose authorized by 26 USC sec. 146(f).

(3) The committee shall issue a confirmation of the notice and election to carry forward ("Confirmation of Carry Forward Allocation of State Ceiling" form).

(4) The committee may consider, but shall not be required to grant, a carry forward notice or election filed after December 31st. [Elective Carry Forward. Any issuer may file with the committee by December 31, of each year, in which the state ceiling exceeds the aggregate amount of private activity bonds issued during the preceding calendar year, a "carry forward notice of intent" and a "carry forward election of unused private activity bond volume cap" (currently, U.S. Treasury Department Form 8328), for the carry forward to the next calendar year, for any purpose authorized by Section 146(f) of the Internal Revenue Code of 1986, of an unallocated portion of the state ceiling. The committee shall issue a carry forward confirmation confirming the notice and election to carry forward the unused portion of the state ceiling. Failure to file the carry forward notice and election forms by December 31, shall not adversely affect an issuer's right to carry forward under this section, provided such forms are filed with the committee within a reasonable time after December 31, of the preceding year, and, in any event, within a time frame acceptable to the Internal Revenue Service.]

Section 12. The committee shall not confirm a notice of intent to issue bonds after the aggregate amount of bond confirmations, including carry forwards, have reached the state ceiling for that year. [Confirmations. No confirmations of notices of intent to issue affected bonds shall be issued by the committee after the total aggregate amount of bonds for which confirmations, including carry forward confirmations, issued during the year equals the state ceiling for that calendar year.]

Section 13. Form and Manner. (1) The notice and confirmation forms required to be filed with and issued by the committee are incorporated by reference in Section 15 of this administrative regulation.

(2) An issuer shall not:

(a) File a notice of intent to issue bonds unless the issuance will be made within the ninety (90) day confirmation period established in Section 7 of this administrative regulation;

(b) Seek an allocation of the state ceiling in excess of the amount necessary to finance all costs of a project. [Form and Manner. The forms for notices and confirmations required to be filed with and issued by the committee are incorporated by reference in Section 15 of this administrative regulation. No issuer shall file a notice of intent to issue affected bonds sooner than will reasonably permit issuance of the bonds within the time frame established by Section 7 of this administrative regulation, nor seeking an allocation of the state ceiling in excess of the amount reasonably required to pay the costs of the project to be financed through sale of the proposed bonds.]

Section 14. Delegation of Functions. The committee shall [will] review and allocate all requests for state ceiling. The committee shall not delegate authority to make allocations of the state ceiling to staff except in cases of surplus or carry forward allocations. Any delegation of authority and the limit of that authority shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made. [No delegation of authority to make allocations of the state ceiling to staff shall be made except for in cases of surplus or carry forward allocations for which the committee gives specific authority to staff. Such delegations of authority, including limits thereto, shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.]

Section 15. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Notice of Intent" application (July 1996 [September 1995]);

(b) "Confirmation of Allocation of State Ceiling" (September 1995);

(c) "Confirmation of Carry-forward Allocation of State Ceiling" (September 1995); [and]

(d) "Notice of Issuance" (September 1995); and

(e) "U.S. Treasury Department Form 8328".

(2) Copies of the forms may be inspected, copied or obtained at the Office of Financial Management and Economic Analysis, 261 Capitol Annex, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN P. MCCARTY, Secretary

APPROVED BY AGENCY: July 12, 1996

FILED WITH LRC: July 12, 1996 at 1 p.m.

TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended)

301 KAR 1:201. Fishing limits.

RELATES TO: KRS ~~[450.040, 450.170,]~~ 150.470, 150.990(2)
 STATUTORY AUTHORITY: KRS 150.025(1) ~~[460.170,]~~ 150.470
 NECESSITY AND FUNCTION: KRS 150.025(1) requires the department to promulgate administrative regulations ~~[To establish size and creel limits]~~ to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. This administrative regulation establishes size, daily, and possession limits for fishing and also repeals 301 KAR 1:100. ~~[This amendment is necessary to adjust size or creel limits on Barkley Lake, Laurel Lake, Kentucky Lake, Symphon Lake, Taylorsville Lake, and the Cumberland River below Lake Cumberland; to add Peabody and Cypress AMAX fishing restrictions, and to incorporate the pertinent provisions of, and repeal 301 KAR 1:100.]~~ ~~[Cave Run Lake, Lebanon City Lake, Lake Malone, Nolin River Lake and Rough River Lake.]~~

Section 1. Definitions. (1) "Artificial baits" means lures or flies made of wood, metal, plastic, feathers, preserved pork rind or similar inert materials and having no organic baits, such as insects, minnows, fish eggs, worms, corn, cheese, cut bait or a similar substance attached to the lure.

(2) "Daily limit" means the creel limit, the maximum number of a particular species or group of species a person may legally take in a day or have in possession while fishing.

(3) "Kentucky bass" means a largemouth bass, Kentucky bass or Coosa bass with a patch of teeth on its tongue.

(4) "Lake" means impounded waters.

(5) "Length" means the distance from the tip of a fish's lower jaw to the tip of its tail, measured with the fish laid flat on a rule and its tail lobes squeezed together.

(6) "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.

(7) "Release" means the [te] return of the fish:

(a) In the best possible physical condition;

(b) Immediately after removing the hook;

(c) To the water from which it was taken; and

(d) [Immediately after removing the hook, in the best physical condition possible, and] In a place where [no obstruction prevents] the fish's immediate escape shall not be prevented.

(8) "Single hook" means a hook with no more than ~~[only]~~ one (1) point.

~~(9) [(9)]~~ "Size limit" means the minimum legal length of a fish.

~~(10) [(9)]~~ "Slot limit" means protecting fish within a specified minimum and maximum size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation and by 301 KAR 1:180, persons fishing in public or private waters shall observe the following daily [ereel,] possession and size limits.

(a) Black bass: daily limit, six (6); possession limit, twelve (12).

1. Largemouth bass, smallmouth bass or Coosa bass: size limit, twelve (12) inches.

2. Kentucky bass: no size limit.

(b) Rock bass: daily limit, fifteen (15); possession limit, thirty (30); no size limit.

(c) Walleye and their hybrids: daily limit, ten (10); possession limit, twenty (20); size limit, fifteen (15) inches.

(d) Sauger: daily limit, ten (10); possession limit, twenty (20); no size limit.

(e) Muskellunge: daily and possession limit, two (2); size limit, thirty (30) inches.

(f) Chain pickerel: daily limit, five (5); possession limit, ten (10);

no size limit.

(g) White bass and yellow bass, singly or in combination: daily limit, thirty (30); possession limit, sixty (60); no size limit.

(h) Striped bass and their hybrids: daily and possession limit, five (5); size limit, fifteen (15) inches.

(i) Crappie: daily limit, thirty (30); possession limit, sixty (60); no size limit.

(j) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit.

(k) Brook trout: daily and possession limit, two (2); size limit, ten (10) inches.

(2) A person shall release grass carp caught from a lake owned or managed by the department. ~~[Persons shall not remove grass carp from a lake owned and managed by the department.]~~

(3) A person shall release fish: ~~[Persons [catching illegal fish] shall release fish:]~~ [immediately return the fish, in the best possible physical condition, to the water from which it was taken.]

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit as established by this administrative regulation; or

(c) Of a particular species, when a [the] person has in his possession the [a] daily limit for that species as established by this administrative regulation[. in his possession].

(4) A person shall not remove any part of the head or tail of any fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.

(5) A person who wishes ~~[Persons who wish]~~ to possess sport fish below the size limit or beyond the possession limit shall:

(a) Obtain the fish from a licensed fish propagator or other legal source; and

(b) Retain a receipt or other written proof that the fish were legally acquired.

(6) A person shall release trout unless he:

(a) Has a valid trout permit;

(b) Is exempted from trout stamp requirements by KRS 150.170; or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator. ~~[Persons not in possession of a valid trout permit shall release trout unless:~~

~~(a) They are exempted from trout stamp requirements by KRS 150.170; or~~

~~(b) They are fishing in licensed pay lakes stocked with trout by the pay lake operator.]~~

Section 3. Fishing Season. The fishing season shall be ~~[be]~~ open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person ~~[Persons]~~ fishing in the waters listed in this section shall observe the following special requirements ~~[administrative regulations]~~. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.

(1) Bad Branch, Letcher County: artificial baits with single hooks only shall be used.

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass:

1. Through February 28, 1997, size limit fourteen (14) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fourteen (14) inches.

2. After February 28, 1997, size limits, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: size limit, fourteen (14) inches.

(3) Barren River Lake and the Barren River upstream from Barren River Lake.

(a) White bass, yellow bass, striped bass and their hybrids, singly

or in combination: daily limit, twenty (20); possession limit, forty (40); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(b) Crappie: size limit, nine (9) inches.

(c) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.

(4) Bert Combs Lake: a person ~~[persons]~~ shall not possess shad or use shad for bait.

(5) Boltz Lake: a person ~~[persons]~~ shall not possess shad or use shad for bait.

(6) Briggs Lake: a person ~~[persons]~~ shall not possess shad or use shad for bait.

(7) Buckhorn Lake: largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(8) Carpenter Lake: a person ~~[persons]~~ shall not possess shad or use shad for bait.

(9) Carr Fork Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(10) Carter Caves Lake.

(a) Fishing **shall be** during daylight hours only.

(b) Largemouth bass: daily and possession limit, one (1) fish; size limit, twenty (20) inches.

(c) A person ~~[Persons]~~ shall not possess shad or use shad for bait.

(11) Cave Run Lake: largemouth bass and smallmouth bass: ~~[through February 20, 1996, size limit, fifteen (15) inches. After February 20, 1996,]~~ slot limit - a person ~~[persons]~~ may keep fish less than thirteen (13) or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.

(12) Corinth Lake: a person ~~[persons]~~ shall not possess shad or use shad for bait.

(13) Cumberland Lake.

(a) Largemouth and smallmouth bass: size limit fifteen (15) inches.

(b) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.

(c) Crappie: size limit, ten (10) inches.

(14) Cumberland River downstream from Barkley Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) Sauger: size limit, fourteen (14) inches.

(15) Cumberland River.

(a) Through February 28, 1997, downstream from the Highway 61 bridge. Trout: slot limit - a person shall release trout between twelve (12) and twenty (20) inches. ~~[persons may keep fish less than twelve (12) or greater than twenty (20) inches and shall release fish between twelve (12) and twenty (20) inches in length; daily and possession limit, (4) four fish under twelve (12) inches and one (1) fish over twenty (20) inches. Persons shall not possess more than these trout limits while in this area, no matter where the fish were caught.]~~

(b) After February 28, 1997, from Wolfe Creek Dam downstream to the Kentucky-Tennessee state line. Brown trout: size limit, twenty (20) inches; creel limit, one (1).

(16) Cyprus AMAX and Robinson Forest Wildlife Management Areas.

(a) Through February 28, 1997:

1. On Starfire Lake:

a. Largemouth bass: size limit, twenty (20) inches; daily and possession limit, one (1).

b. Sunfish: daily and possession limit ten (10).

c. Channel catfish: size limit, fifteen (15) inches; daily and possession limit, four (4).

2. On impounded waters of the area, persons shall not fish:

a. Except during daylight hours.

b. From January 1 through June 30.

(b) After February 28, 1997:

1. On impounded waters of the area;

a. Largemouth bass: size limit, fifteen (15) inches; daily and possession limit, one (1);

b. Sunfish: daily and possession limit, ten (10);

c. Channel catfish: size limit, fifteen (15) inches; daily and possession limit, four (4).

2. Persons shall not fish on Starfire Lake between January 1 and May 31.

(17) ~~[(16)]~~ Dale Hollow Lake.

(a) Smallmouth bass: daily limit, two (2); size limit, eighteen (18) inches.

(b) Walleye and their hybrids: daily limit, ten (10); size limit, sixteen (16) inches.

(c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.

(d) Muskellunge: daily limit, one (1).

(e) Rainbow trout and lake trout.

1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.

2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.

(18) ~~[(17)]~~ Dewey Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(19) ~~[(18)]~~ Dix River for two (2) miles downstream from Herrington Lake Dam.

(a) Artificial baits only.

(b) Brown trout: size limit, fifteen (15) inches.

(20) ~~[(19)]~~ Dix River upstream from Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches ~~[long]~~ or longer.

(21) ~~[(20)]~~ Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. ~~[persons may keep fish less than twelve (12) or greater than sixteen (16) inches and shall release fish between twelve (12) and sixteen (16) inches.]~~ The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.

(22) ~~[(21)]~~ Elmer Davis Lake.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. ~~[persons may keep fish less than twelve (12) or greater than sixteen (16) inches and shall release fish between twelve (12) and sixteen (16) inches.]~~

(b) Persons shall not possess shad or use shad for bait.

(23) ~~[(22)]~~ Fishtrap Lake.

(a) Largemouth bass or smallmouth bass: size limit, fifteen (15) inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(24)(a) A person shall not possess shad or use shad for bait.

(b) Upper ~~[(23)]~~ Game Farm Lake:

1. ~~[(a)]~~ Largemouth bass and smallmouth bass: daily limit, two (2); size limit, fifteen (15) inches.

2. ~~[(b)]~~ Channel catfish: daily limit, three (3).

(c) Lower Game Farm Lake:

1. Through February 28, 1997, size and daily limits shall be the same as the Upper Game Farm Lake.

2. After February 28, 1997:

a. Persons thirteen (13) years or older shall not fish.

b. Daily limit, three (3) fish regardless of species. ~~[shall not possess shad or use shad for bait.]~~

(25) ~~[(24)]~~ Grayson Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(26) ~~[(25)]~~ Greenbo Lake. **A person** ~~[Persons]~~ shall not possess shad or use shad for bait.

(27) ~~[(26)]~~ Green River Lake. Crappie: size limit, nine (9) inches.

(28) ~~[(27)]~~ Guist Creek Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(29) ~~[(28)]~~ Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches long or longer.

(30) ~~[(29)]~~ Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass:

1. Through February 28, 1997, size limit fourteen (14) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fourteen (14) inches.

2. After February 28, 1997, size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: size limit, fourteen (14) inches.

(31) Laurel Lake. After February 28, 1997, largemouth bass and smallmouth bass, size limit, fifteen (15) inches.

(32) ~~[(30)]~~ Lebanon City Lake. ~~[After February 20, 1996:]~~

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches; daily limit, fifteen (15).

(c) Bluegill and shellcrackers (singly or in aggregate): creel limit, thirty (30).

(d) Channel catfish: creel limit, five (5).

(33) ~~[(34)]~~ Leary Lake.

(a) Fishing **shall be** ~~[is permitted]~~ during daylight hours only.

(b) Largemouth bass: daily limit, one (1); size limit, fifteen (15) inches.

(c) Bluegill: daily limit, twelve (12).

(d) Channel catfish: daily limit, two (2).

(34) ~~[(32)]~~ Lincoln Homestead Lake.

(a) Fishing **shall be** ~~[is permitted]~~ during daylight hours only.

(b) Largemouth bass: daily limit, three (3); size limit, fifteen (15) inches.

(c) Bluegill and redear sunfish: daily limit, ten (10) fish over seven (7) inches, singly or in combination; no limit on fish less than seven (7) inches.

(d) Channel catfish: daily limit, three (3).

(e) **A person** ~~[Persons]~~ shall not possess shad or use shad for bait.

(35) ~~[(33)]~~ Lake Malone. Largemouth bass: ~~[through February 20, 1996, daily limit may include no more than two (2), and the possession limit no more than four (4), fish under twelve (12) inches. After February 20, 1996,]~~ slot limit - **a person** ~~[persons]~~ may keep fish less than twelve (12) or greater than fifteen (15) inches and shall release fish between twelve (12) and fifteen (15) inches.

(36) ~~[(34)]~~ Marion County Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) **A person** ~~[Persons]~~ shall not possess shad or use shad for bait.

(37) ~~[(35)]~~ Martins Fork and its tributaries in Harlan County from the Left Fork upstream two and three-tenths (2.3) miles to the Cumberland Gap National Park boundary. Artificial baits with single hooks only **shall be used**.

(38) ~~[(36)]~~ Mauzy Lake. Largemouth bass; no size limit.

(39) ~~[(37)]~~ McNeely Lake. **A person** ~~[Persons]~~ shall not possess shad or use shad for bait.

(40) ~~[(38)]~~ Mill Creek Lake. **A person** ~~[Persons]~~ shall not possess

shad or use shad for bait.

(41) ~~[(39)]~~ Nolin River Lake.

(a) Largemouth bass and smallmouth bass: ~~[After February 20, 1996,]~~ size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(42) ~~[(40)]~~ Ohio River.

(a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.

(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit may be fifteen (15) inches long or longer.

(43) ~~[(41)]~~ Paintsville Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(44) ~~[(42)]~~ Parched Corn Creek, Wolfe County. Artificial baits with single hooks **shall be used** ~~[only]~~.

(45) Peabody Wildlife Management Area (Goose Lake, Island Lake or South Lake):

(a) Largemouth bass: size limit, twenty (20) inches; daily and possession limit, one (1).

(b) Bluegill: daily and possession limit, fifteen (15).

(c) Redbreast sunfish: daily and possession limit, fifteen (15).

(d) Channel catfish: size limit, fifteen (15) inches; daily and possession limit, two (2).

(e) Walleye: size limit, fifteen (15) inches; daily and possession limit, one (1).

(f) Crappie: daily and possession limit, ten (10).

(g) **A person** ~~[Persons]~~ shall not fish:

1. Except during daylight hours;

2. From October 16 through June 30 on South Lake or Island Lake, and, until February 28, 1997, on Goose Lake;

3. After February 28, 1997, from October 16 through the last day of February on Goose Lake.

(h) **A person** ~~[Persons]~~ shall not gig frogs.

(46) ~~[(43)]~~ Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 392. Artificial baits with single hooks only.

(47) ~~[(44)]~~ Lake Reba.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Persons shall not possess shad or use shad for bait.

(48) ~~[(45)]~~ Rough River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass: ~~[after February 20, 1996,]~~ size limit, fifteen (15) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(c) White bass: ~~for [after February 20, 1996, for]~~ size and creel limit purposes anglers shall consider fish of the Morone family with an unseparated, U-shaped rear tooth patch on the tongue to be white bass.

(d) Hybrid striped bass: ~~for [after February 20, 1996, for]~~ size and creel limit purposes anglers shall consider fish of the Morone family with a separated rear tooth patch on the tongue to be hybrid striped bass.

(49) ~~[(46)]~~ Shanty Hollow Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) **A person** ~~[Persons]~~ shall not possess shad or use shad for bait.

(50) ~~[(47)]~~ Shillalah Creek, Bell County, outside the Cumberland Gap National Park. Artificial baits with single hooks **shall be used** ~~[only]~~.

(51) ~~[(48)]~~ Spurlington Lake. **A person** ~~[Persons]~~ shall not possess shad or use shad for bait.

(52) Sympson Lake: after February 28, 1997, largemouth bass: size limit, fifteen (15) inches.

(53) [(49)] Taylorsville Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: daily limit, fifteen (15); possession limit, thirty (30); after February 28, 1997, size limits, nine (9) inches.

(c) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(54) [(60)] Tennessee River downstream from Kentucky Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) Sauger: size limit, fourteen (14) inches.

(55) [(61)] Yatesville Lake. Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

Section 5. 301 KAR 1:100 is hereby repealed.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: July 11, 1996 at 9 a.m.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended)**

301 KAR 3:028. Applying for disability hunting and fishing exemption [licenses].

RELATES TO: KRS 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.170(7), (8)

NECESSITY AND FUNCTION: KRS 150.170(7) and (8) authorize certain disabled persons to hunt and fish without a license. This administrative regulation is necessary to establish: (1) the procedure by which a person, including one (1) declared disabled by the U.S. Railroad Retirement Board, may obtain a disability exemption from purchasing a hunting or fishing license; (2) a standardized procedure for law enforcement officers to verify the exemption of a person in the field. [To specify procedures for those exempt from purchasing sport hunting or fishing licenses because of disabilities to obtain an exemption certificate to carry in lieu of a license. This administrative regulation is necessary to provide a standardized way for law enforcement officers to verify the license exempt status of persons encountered in the field. This amendment is necessary to add application procedures for persons declared disabled by the U. S. Railroad Retirement Board, and to require persons receiving disability certificates to include personal information on the certificate to facilitate identification.]

Section 1. Before hunting or fishing, a person exempted by KRS 150.170(7) and (8) [Persons exempt] from purchasing a sport hunting or sport fishing license shall:

(a) [Under the provisions of KRS 150.170(7) or (8) shall:

(1) Obtain a disability license exemption card from the department;

(b) Provide the following information on the spaces provided on the card:

1. Address, including city, state and zip code;

2. Eye color;

3. Hair color;

4. Sex;

5. Height; and

6. Weight.

(c) Sign the exemption card.

(2) An exempted person shall carry while hunting or fishing:

(a) The disability exemption card; and

(b) A driver's license or other proof of identity. [card from the department verifying their exempt status before engaging in an act for which a license is required; and]

(2) Complete the information requested on the card before hunting or fishing; and

(3) Carry this card, along with other proof of identity, while hunting or fishing.]

Section 2. To verify their exempt status, Kentucky residents:

(1) Declared totally and permanently disabled by the federal Social Security Administration shall submit to the department a letter of verification from their local federal Social Security office.

(2) Who have a military service-connected disability shall follow procedures established by KRS 150.170(7). [Who are at least fifty (50) percent disabled as the result of a military service-connected disability shall submit to the department a letter of verification from their regional VA representative.]

(3) Declared totally and permanently disabled by the Kentucky State Workers' Compensation Board shall:

(a) Obtain a Disability Workers Compensation Exemption form from the department.

(b) Complete the form and mail it to the address given on the form.

(4) Declared totally and permanently disabled by another state's workers' compensation board shall provide the department a letter, on that state board's letterhead, confirming the percentage of the disability.

(5) Declared totally and permanently disabled by the United States Railroad Retirement Board shall submit to the department a letter of verification from the United States Railroad Retirement Board, P.O. Box 3705, Louisville, Kentucky 40201.

(6) [Section 3:] Upon receipt of the verification required by [stipulated in] Section 2 of this administrative regulation, the department shall issue a card certifying the person is exempt from sport hunting or sport fishing license requirements.

Section 3. Duration of Disability Exemption. (1) Certification by the Social Security Administration, the United States Railroad Retirement Board, or a state worker's compensation board shall remain valid for three (3) years after issue.

(2) Certification by the Veterans Administration shall remain valid for the life of the applicant.

Section 4. Incorporation by Reference. (1) **The following material is incorporated by reference:**

(a) "Disability Exemption Verification" card, (1996); and

(b) "Disability Workers Compensation Exemption Form", (January 1, 1995) [edition, is incorporated by reference].

(2) **This material [it] may be inspected, copied, or obtained at the Department of Fish and Wildlife Resources, Division of Fiscal Control, #1 Game Farm Road, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. through 4:30 p.m.**

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: July 11, 1996 at 9 a.m.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended)

301 KAR 4:200. Cyprus AMAX and Robinson Forest Wildlife Management Areas use requirements and restrictions.

RELATES TO: KRS ~~[150.170, 150.175,]~~ 150.250, 150.620, 150.990~~(2)~~

STATUTORY AUTHORITY: KRS 150.025(2), 150.620 ~~[13A.350, 150.015, 150.021, 150.170, 150.175, 150.240, 150.700]~~

NECESSITY AND FUNCTION: KRS 150.620 authorizes the department to provide for the protection, conservation, use and management of the lands, waters, and wildlife associated with the Cyprus AMAX Wildlife Management Area and Robinson Forest Wildlife Management Area by detailing requirements and restrictions for permit agents and users of these areas. This amendment is necessary to remove fishing restrictions, which are now included in 301 KAR 1:201; and remove the sections dealing with permit agents, since all license agents can now sell area permits.

Section 1. Definitions. (1) "The area" means the Cyprus AMAX Wildlife Management Area and the Robinson Forest Wildlife Management Area, those lands in Breathitt, Knott and Perry counties owned by the Cyprus AMAX Mineral Company or the University of Kentucky and managed by the department pursuant to agreements between the department, Cyprus AMAX Mineral Company and the University of Kentucky.

(2) "Group" means any family, organization or gathering using the area for a specific event.

(3) "Private inholding" means lands completely surrounded by the area but not owned by the University of Kentucky or the Cyprus-AMAX Mineral Company.

(4) "Security deposit" means a bond, irrevocable letter of credit from a financial institution, or benefits on a certificate of deposit irrevocably assigned to the department.

Section 2. Individual [User] Permits. A person [Persons] sixteen (16) years of age or older on the area for any purpose shall have in their possession a nontransferable individual [user] permit except:

(1) Employees, agents or persons under contract to Cyprus AMAX Mineral Company, the University of Kentucky or the department performing their official duties; or

(2) Persons on the area as a necessary part of their jobs or to protect public safety or well-being; or

(3) Persons on the area for educational purposes and accompanied by officials of the University of Kentucky; or

(4) Persons conducting research on the area with the written approval of the department, Cyprus AMAX Mineral Company or the University of Kentucky; or

(5) Persons hiking on the Boardinghouse Interpretive Trail from the mouth of Boardinghouse Branch to the Robinson Forest Fire Tower.

Section 3. Private Inholdings and Closed Watersheds. (1) Private inholdings shall be open to hunting or fishing only when the area is open to hunting or fishing.

(2) Persons shall not hunt, fish, train dogs or conduct field trials on lands owned by the University of Kentucky in the Clemons Fork, Coles Fork and Lewis Fork watersheds or in the Buckhorn Creek watershed below Hurricane Branch and above Lewis Fork.

Section 4. Event Permits. (1) A group of people who wish to use the area may apply for an event permit upon the application of one (1) member of the group. If the event permitted is granted, individual members of the group shall not be required to purchase an individual permit. [In lieu of individual user permits, a

person representing a group using the area may have in possession an event permit.]

(2) The event permit shall apply to all members of the group.

(3) An event permit shall specify:

(a) Its period of validity, not to exceed four (4) days;

(b) The activity in which the group will engage;

(c) The name of the group;

(d) The approximate number of persons in the group; and

(e) The name and address of the person representing the group.

(4) The department shall not issue event permits for activities in which game or fish are taken.

Section 5. Permit Applications. (1) Persons shall apply for individual or event permits on individual permit or event permit forms provided by the department.

(2) Persons shall not knowingly provide false information on permit applications.

(3) Fees.

(a) Individual permits: ten (10) dollars annually;

(b) Event permits: twenty-five (25) dollars per event.

(4) Persons applying by mail shall include a certified check or money order for the correct amount.

(5) Applicants shall provide all information required on the application form. The department shall return incomplete applications to the applicant.

(6) ~~Permits [issued before February 20, 1996, shall be valid through that date. After February 20, 1996, permits]~~ shall be valid from March 1 through the end of February of each year.

(7) The department may:

(a) Limit the number of event permits issued; or

(b) Assign specific locations for events; or

(c) Deny applications for events which would interfere with management objectives for the area or unduly interfere with other uses or users; or

(d) Revoke individual or event permits for violations of the terms of the application or this administrative regulation.

(8) The department shall keep all applications, waivers of liability and copies of permits for a minimum of two (2) years after expiration ~~[the permits expire]~~.

Section 6. ~~[Permit Replacement or Refund. (1) Persons who lose their permits may make a written request to the department for a duplicate and include a four (4) dollar replacement fee. The department shall issue a duplicate upon verification that a permit was purchased.~~

~~(2) The department shall issue refunds only to persons who have purchased multiple individual permits valid for the same period of time.~~

~~(3) The department shall issue refunds only to representatives of groups who have purchased multiple event permits for the same event.~~

~~(4) Persons wishing a refund for multiple permits shall make a written request to the department and enclose the permit for which a refund is sought.~~

~~(5) The department shall issue refunds if it can verify that multiple permits were issued.~~

Section 7. Prohibited Activities. Except for persons exempted from permit requirements by Section 2(1) through ~~[(2), (3), and]~~ (4) of this administrative regulation, persons on the area shall not:

(1) Swim for recreational purposes;

(2) Camp except in designated camping areas;

(3) Have a fire, except in designated camping areas;

(4) Operate motorized vehicles off existing roads or in areas designated by signs as closed to vehicular travel ~~[beyond where signs indicate vehicles are not allowed];~~

(5) Operate vehicles not licensed or legal for use on public

streets;

- (6) Block roads or gates;
- (7) Discharge firearms, except while hunting;
- (8) Construct structures or stands except portable deer stands, which hunters shall remove daily;
- (9) Use boats;
- (10) Hunt or fish in areas designated by signs as closed to hunting or fishing;
- (11) Enter areas designated by signs as no trespassing areas;
- (12) Disobey [Act contrary] to instructions from officials of the department, the University of Kentucky or the Cyprus AMAX Mineral Company.

Section 8. ~~[Fishing Restrictions. (1) Persons fishing on all impounded bodies of water on the area shall:~~

- ~~(a) Fish only from July 1 through December 31; and~~
- ~~(b) Fish only during daylight hours.~~

~~(2) Persons fishing on Starfire Lake shall abide by the following limits:~~

| Species | Creel Limit | Size Limit |
|-----------------|-------------|------------|
| Largemouth bass | 1 | 20" |
| Sunfish | 10 | none |
| Channel catfish | 4 | 16" |

Section 9. ~~Permit Agent Qualifications, Issuing Fees, Issuance Requirements, and Reporting Requirements. (1) Event permits are available only from the department.~~

~~(2) The department may designate as permit agents to sell individual permits:~~

~~(a) The county clerks of Breathitt, Knott, Perry, Floyd, Lee or Letcher counties; or~~

~~(b) Businesses in Breathitt, Knott, Perry, Floyd, Lee or Letcher counties customarily open at least fifty-six (56) hours per week, year round.~~

~~(3) Businesses wishing to become permit agents shall:~~

~~(a) Complete an issuing agent application form and agreement; and~~

~~(b) Pay in advance for permits consigned; or~~

~~(c) Furnish a security deposit equal in value to the permits consigned.~~

~~(4) Permit agents.~~

~~(a) Shall retain an issuing fee of forty (40) cents from each permit sold.~~

~~(b) Shall not charge additional fees for issuing permits.~~

~~(c) Shall issue permits sequentially.~~

~~(d) Shall not knowingly record false information on the permit.~~

~~(e) Shall, on or before the tenth day of the month following the month of sale:~~

~~1. Report to the department the number of permits issued;~~

~~2. Remit monies collected, less the issuing fee; and~~

~~3. Send the department completed and signed permit applications.~~

~~(f) Shall, on or before March 25:~~

~~1. Report to the department the number of permits issued for the preceding year and the amount of money remitted; and~~

~~2. Return all unissued permits.~~

~~(g) Shall pay the department for unissued permits not returned.~~

~~(h) Shall file reports on forms supplied by the department.~~

~~(5) If the permit agent does not remit monies due, the department shall make collection through the agent's security deposit.~~

~~(6) If an error is made in issuing that cannot be clearly and legibly corrected, permit agents shall void the permit, issue a new one and return the voided permit in its entirety with the next monthly report.~~

Section 10. ~~Revoking Permit Agent Designations. (1) The department may revoke permit agent designations if:~~

~~(a) The permit agent is delinquent in submitting reports and monies four (4) times in a twelve (12) month period; or~~

~~(b) The permit agent fails to respond to a reminder notice and does not report and remit by the 25th of the month the report is due; or~~

~~(c) The permit agent's check will not clear the bank and the permit agent does not make restitution by a certified check, cashier's check or money order within five (5) working days of notification.~~

~~(d) The permit agent does not remit fees owed as a result of an audit.~~

~~(2) A permit agent whose designation is revoked shall not be eligible for reinstatement for a period of twelve (12) months.~~

~~(3) If a designation is revoked the department shall:~~

~~(a) Collect all unissued permits and unreported sales; and~~

~~(b) Collect all monies due through the permit agent's security deposit.~~

Section 11. ~~Audits. The department may audit the consignment, records and reports pertaining to the sale of permits without prior notice during the permit agent's regular business hours.~~

Section 12. ~~Material Incorporated by Reference. (1) The following forms are incorporated by reference:~~

~~(a) [Application for Appointment as Issuing Agent, Cyprus AMAX and Robinson Forest User Permit.~~

~~(b) Issuing Agent Agreement for Cyprus AMAX and Robinson Forest User Permits.~~

~~(c) Agreement For Access to Designated Cyprus AMAX - Robinson Forest Lands: Individual Permit, 1994.~~

~~(b) [(d)] Agreement for Access to Designated Cyprus AMAX - Robinson Forest Lands: Event Permit, 1994.~~

~~(2) This material may be obtained from, or examined or copied at, the offices of the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. eastern time.~~

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: July 11, 1996 at 9 a.m.

DEPARTMENT OF AGRICULTURE
Division of Regulation and Inspection
(As Amended)

302 KAR 78:020. Use, sale and distribution of tobacco products.

RELATES TO: KRS 438.305 to 438.340 [Chapter 438, SB 137]

STATUTORY AUTHORITY: KRS 438.340 [SB 137]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 438.305 to 438.340 [SB 137, enacted by the 1996 General Assembly, became effective March 5, 1996. SB 137] requires a seller of tobacco products to obtain proof of the age of a prospective buyer or recipient of tobacco products if he has reason to believe the prospective buyer or recipient is under eighteen (18) years old; [requires] the establishment of the types of documentation accepted as proof of age; and notification of the employees of a seller of tobacco products and of the public of the requirements of KRS 438.305 to 438.340 [SB 137].

Section 1. Proof of age shall be by a driver's license or nondriver identification card issued by a Kentucky Circuit Clerk.

Section 2. (1) A retail establishment selling tobacco products shall post a sign no smaller than five and one-half (5 1/2) inches in width

by eight and one-half (8 1/2) inches in length, in a conspicuous place in the establishment.

(2) The sign shall contain the following wording: WARNING: THE SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO ANY PERSON UNDER AGE EIGHTEEN IS PROHIBITED BY KENTUCKY LAW. KRS 438.310(1).

BILLY RAY SMITH, Commissioner

APPROVED BY AGENCY: August 6, 1996

FILED WITH LRC: August 14, 1996 at 11 a.m.

**JUSTICE CABINET
Division of Charitable Gaming
(As Amended)**

500 KAR 11:025. Quarterly reports.

RELATES TO: KRS 238.550, 238.570(1)

STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550, 238.570(1)

NECESSITY, FUNCTION, AND CONFORMITY: All licensed charitable organizations are required to remit one-half (1/2) of one (1) percent of gross receipts derived from charitable gaming. Quarterly reports are required of all licensed charitable organizations. This administrative regulation establishes the method and time of filing the quarterly reports and remitting payment of the quarterly fees due.

Section 1. Quarterly Reporting Period Defined. ~~[With the exception of the initial start up quarterly reporting period, which shall cover the time period from March 16, 1994, through September 30, 1994, and which shall be due on or before November 15, 1994,]~~ A quarterly report shall be filed by each licensed charitable organization no later than thirty (30) days following the close of each calendar year quarter.

Section 2. Quarterly Reports. ~~[(4)]~~ Quarterly reports shall be submitted on forms prescribed by the division and shall be signed by an authorized officer of the licensed charitable organization and, if prepared by an individual other than an authorized officer, by the preparer.

~~[(2) If a suborganization of the licensed charitable organization has conducted charitable gaming during the reporting period, the suborganization's earnings and activities shall be reported by the licensed charitable organization, but on a form separate from that of the parent organization.]~~

Section 3. Fees Due. The fees imposed by KRS 238.570(1) on gross gaming receipts of licensed charitable organizations shall be remitted by check or money order made payable to "Kentucky State Treasurer" at the time the quarterly reports are due.

Section 4. Late Fine [Fees]. (1) If the quarterly fee imposed by KRS 238.570(1) is not remitted when due, a fine [then a late fee] of twenty-five (25) dollars per day, not to exceed \$250 dollars per quarter, shall be imposed on the licensed charitable organization until the quarterly fee has been received by the division.

(2) The fine [late fee] imposed in subsection (1) of this section shall be paid within ten (10) days of receipt of an invoice from the division and shall be by check or money order made payable to "Kentucky State Treasurer".

Section 5. Incorporation by Reference. (1) The following reporting forms are incorporated by reference:

- (a) Form CG[-T]-QR, "Quarterly Activity Report (6/96 ~~(10/94)~~)".
- (b) Attachment A, "Charitable Gaming Accounting Summary (6/96 ~~(10/94)~~)".
- (c) Attachment B, "Report of All Prize Winners of \$600 or More

(6/96 ~~(10/94)~~)".

(d) Attachment C, "Special License Activity Report (6/96) ~~(Sub-organization Activity Report (10/94))~~".

(e) Attachment D, "Summary of Gaming Activity (6/96)".

(f) Attachment E, "Report of Charitable Contributions Made by Licensee (6/96)".

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100 ~~(Room 101)~~, Frankfort, Kentucky 40601-2639 ~~(2699)~~, 8 a.m. to 4:30 p.m., Monday through Friday.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

**JUSTICE CABINET
Division of Charitable Gaming
(As Amended)**

500 KAR 11:030. Charity game ticket standards.

RELATES TO: KRS 238.545(1), (2)

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1), (2)

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish certain standards for charity game ticket construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of charity game tickets and for the conduct of play of charity game tickets.

Section 1. Charity Game Ticket Construction Standards. The following standards shall govern the construction of charity game tickets:

(1) Charity game tickets shall be constructed so that concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the charity game ticket using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, constructed, glued and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each charity game ticket in a deal shall bear the same serial number. Only one (1) serial number shall be used in a deal. No serial number used in a deal of charity game tickets shall be repeated by the same manufacturer on that same manufacturer's form within a three (3) year period.

(4) The numbers or symbols on a charity game ticket shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol(s) to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) The window slits on each charity game ticket shall be perforated on the three (3) cut sides. All charity game tickets shall be glued on all four (4) edges and between each window. The glue shall be of sufficient strength and type to prevent the undetectable separation or delamination of the charity game ticket.

(6) The following information shall be printed on a charity game ticket measuring one and one-fourth (1 1/4) inches by two and one-fourth (2 1/4) inches or larger, unopened:

- (a) The name of the manufacturer, or its distinctive logo;
- (b) The name of the game;
- (c) The manufacturer's form number;
- (d) The price per individual charity game ticket, unless accompa-

nied by a flare with that information;

(e) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket; and

(f) The number of winners and respective winning numbers or symbols, and specific prize amounts, unless accompanied by a flare with that information.

(7) The following information shall be printed on a charity game ticket measuring less than one and one-fourth (1¼) inches by two and one-fourth (2¼) inches, unopened:

(a) The name of the manufacturer, or its distinctive logo; and

(b) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket.

Section 2. Randomization. The following randomization standards shall govern the manufacture of charity game tickets:

(1) The deal shall be assembled so that winning tickets are placed throughout the deal.

(2) The deal shall be assembled and packaged in a manner which prevents isolation of winning tickets from variations in size, the appearance of a cut edge, or other markings of the tickets.

(3) The deal shall be assembled and packaged in a manner which prevents detection of winning tickets through variations in printing graphics or colors.

(4) Winning charity game tickets shall be distributed and mixed among all other charity game tickets in a deal so as to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning charity game ticket may be determined.

(5) The charity game ticket deal shall be assembled so that no placement of winning or losing charity game tickets exists that allows the possibility of prize manipulation.

Section 3. Packaging and Distribution. (1) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal which includes a warning to the purchaser that the deal may have been tampered with if the package, box or other container was received by the purchaser with the seal broken.

(2) A deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container.

(3) Manufacturers shall seal or tape, with a tamper-resistant seal or tape, every entry point into a container of charity game tickets prior to shipment. The seal or tape shall be constructed to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

Section 4. Flares. Every deal of charity game tickets shall contain a flare that has printed or affixed on it the following information:

(1) The name of the game;

(2) The manufacturer's name or logo;

(3) The manufacturer's form number;

(4) The ticket count;

(5) The prize structure that includes the number of winning charity game tickets by denomination, with their respective winning symbols or number combinations;

(6) The cost per play; and

(7) The game serial number.

Section 5. Tracking by Manufacturer. Every manufacturer of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 6. Tracking by Distributor. Every distributor of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to

inspection by division staff.

Section 7. Defects. (1) Should a defect in packaging or in the construction of a charity game ticket game be discovered by, or reported to the division, the division shall take immediate steps to notify the manufacturer of the game containing the alleged defect.

(2) Should the division, in consultation with the manufacturer, determine that a defect actually exists, and should the division determine that the defect affects game security or otherwise threatens public confidence in the game, the division may, with respect to deals for use still located within the Commonwealth of Kentucky, require the manufacturer to:

(a) Recall the deals affected that have not been sold at retail to licensed organizations;

(b) Recall the deals, by form number, from the distributor level; or

(c) Issue a total recall of all affected deals.

(3) In choosing and directing a particular recall from subsection (2) of this section, the division shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;

(b) Whether the defect affected game security;

(c) Whether the defect affected game playability;

(d) Whether the defect was limited to a specific number of deals of a particular form number;

(e) Whether the defect was easily detectable by a charitable gaming organization, ~~or a suborganization or subordinate organization thereof~~;

(f) Whether the defect was easily detectable by members of the general public;

(g) Whether the defect threatens public confidence in the game; or

(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

Section 8. Rules of Play. The following rules of play govern the conduct and sale of charity game tickets:

(1) The flare described in Section 4 of this administrative regulation shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.

(2) Charity game tickets shall not be sold to the public from the original packing box or container.

(3) If a deal of charity game tickets is received in two (2) or more boxes, packages or containers, all of the charity game tickets from the boxes, packages or containers shall be placed out for play at the same time.

(4) No charity game tickets which have been marked, defaced, altered, tampered with or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing shall be placed into play.

(5) All winning charity game tickets shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(6) All winning charity game tickets with a prize value of fifty (50) dollars and above, all seal card winners with a prize value of fifty (50) dollars and above, and all unsold charity game tickets shall be retained by the licensed charitable organization for a period of twelve (12) months to allow auditing by the staff of the division.

(7) All used nonwinning charity game tickets and seal cards, and all winning and unsold charity game tickets and seal cards which have been retained for the required twelve (12) month period, shall be disposed of by burning, shredding, destroying or defacing in some manner to prevent reuse of any charity game ticket or seal card or any portion thereof.

(8) An authorized representative of the charitable organization conducting the event at which charity game tickets are sold shall verify the serial numbers or winner protections for all winning charity

game tickets redeemed.

(9) If a deal is not played to completion and there remain unsold winning charity game tickets, the licensed charitable organization conducting the gaming shall sell the remaining charity game tickets on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. If no winning charity game tickets remain in the deal, the licensed charitable organization shall consider the deal closed or completed and shall retain unsold charity game tickets as required in subsection (6) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the deal to complete play of the deal.

(10) If a seal card from a deal or deals is not played to completion, the licensed charitable organization shall sell the remaining charity game tickets necessary to play out the seal card on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the seal card from the deal to complete play of the deal or the seal card.

(11) No individual involved in any capacity in the conduct of a charitable gaming event at which charity game tickets are sold shall be permitted to purchase or play charitable game tickets.

(12) No charity game ticket shall be sold to the public at a price different than that printed on the charity game ticket or upon the flare which accompanies the charity game ticket.

Section 9. Automated Charity Game Ticket Dispensers. (1) Approval of a automated charity game ticket dispensers. No automated charity game ticket dispenser may be sold, leased or otherwise furnished to any person in the state unless a dispenser which is identical to the dispenser intended to be sold, leased or otherwise furnished has been first presented to the division by its manufacturer, at the manufacturer's expense, for review by the division or has been certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements set forth in subsection (2) of this section, and the dispenser has been approved by the division. If granted, approval extends only to the specific dispenser model approved, and any modification shall first be approved by the division. The division may keep the dispenser for further testing and evaluation for as long as the Division deems necessary.

(2) Manufacturing requirements. Each automated charity game ticket dispenser shall:

(a) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;

(b) Contain columns which accommodates different sized charity game tickets;

(c) Be constructed so that customers can see how many charity game tickets remain within the dispenser or have resettable counters visible to the customer indicating the number of charity game tickets left in each column of the dispenser;

(d) Have an outlet or tray to catch dispensed charity game tickets;

(e) Accurately dispense the correct number of charity game tickets;

(f) Contain one (1) or more player buttons on the front of the dispenser to dispense charity game tickets when pressed;

(g) Have a minimum of two (2) and a maximum of eight (8) columns in a separate locking compartment;

(h) Contain a luminated electronic display to display the value of the currency;

(i) Be capable, in the event a malfunction occurs or the electrical

power is interrupted after currency has been validated, of accurately redisplaying the value of the currency after the malfunction or power is restored;

(j) Not dispense any credits or redeem a winning charity game ticket;

(k) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;

(l) Not have a video screen or produce audio sounds except for security alarms;

(m) Not resemble a slot machine or other gambling device;

(n) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;

(o) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;

(p) Not record test sales of charity game tickets or currency acceptances on the dispenser's accounting meters;

(q) Contain a nonresettable accounting meter for total currency validated and for total of charity game tickets dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;

(r) Contain an EPROM microchip which holds the dispenser's programming code and which is identical in all respects to the manufacturer's EPROM microchip approved by the division;

(s) Contain a RAM or EPROM microchip equipped with a RAM microchip which shall maintain the same information as required in paragraph (q) of this subsection for six (6) months after power has been disconnected and which is installed with a tamper-proof seal inside the dispenser;

(t) Automatically discontinue operation when any non-resettable accounting meter, RAM microchip, or EPROM microchip is disconnected;

(u) Contain at least one (1) electronic currency validator which shall:

1. Only validate United States currency;

2. Not validate currency in denominations in excess of twenty (20) dollars;

3. Transmit the value of validated currency to the charity game ticket dispenser;

4. Be equipped with mechanisms to ensure that charity game tickets will not be dispensed unless the currency was validated and retained;

5. Be capable of preventing acceptance of known counterfeit currency;

6. Return any invalid currency to the player;

7. Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and

8. Automatically discontinue accepting or validating currency if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

(3) Automated charity game ticket dispensing limitations. The following limitations apply to the use of automated charity game ticket dispensers:

(a) No charitable gaming organization shall use the dispenser until any previous user has removed its charity game tickets and money from the dispenser;

(b) Each charitable organization operating the dispenser shall place upon the dispenser an identification label which displays the organization's name and license number;

(c) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session;

(d) No person shall put out any charity game ticket deal in a dispenser unless the entire deal shall be sold solely from the dispenser. All charity game tickets in any one column shall have the

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same serial number. Each charity game ticket deal shall be placed in a minimum of two (2) columns to ensure randomization;

(e) No licensee may display, use or otherwise furnish a dispenser which has in any manner been tampered with or which otherwise may deceive the public or affect a person's chances of winning;

(f) No charity game ticket deal shall be placed in the dispenser until the entire deal of charity game tickets previously in the dispenser has been played out or permanently removed; and

(g) No charity game tickets once placed in the dispenser shall be removed from the dispenser, except for those charity game tickets actually played by consumers, removed by division representatives or law enforcement agencies, temporarily removed during necessary repair and maintenance or removed at the end of the gaming session.

(4) Inspection. The division or its authorized representatives may examine and inspect any automated charity game ticket dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

(5) Recordkeeping.

(a) Each licensed charitable organization shall maintain the following information in connection with its use of an automated charity game ticket dispenser:

1. Date of purchase or lease of each dispenser;
2. Model and serial number of each dispenser;
3. Purchase or lease price of each dispenser;
4. Name, address and license number of the distributor from whom the dispenser was purchased, leased or otherwise furnished; and

5. A record of all maintenance and repairs relating to the dispenser.

(b) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:

1. Date of sale or lease;
2. Quantity sold or leased;
3. Cost per dispenser;
4. Model and serial number of each dispenser; and
5. Name, address and license number of the purchaser or lessee;

(c) All records, reports and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the division.

(6) Defects. If the division detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, that affects the integrity or security of the charity game ticket game, the division may direct the manufacturer, distributor or organization to cease the sale, lease or use of the dispenser, as applicable, and may require the manufacturer to correct the defect, malfunction or problem or recall the dispenser immediately upon notification by the division to the manufacturer. If the manufacturer, distributor or organization detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, such entity shall immediately remove the dispenser from use and notify the division of such action.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: July 11, 1996

FILED WITH LRC: July 12, 1996 at 3 p.m.

JUSTICE CABINET
Division of Charitable Gaming
(As Amended)

500 KAR 11:080. ~~[Special]~~ Charity fundraising event.

RELATES TO: KRS 238.505(8) ~~[(9)]~~

STATUTORY AUTHORITY: KRS 238.505(8) ~~[(9)]~~, 238.515(2), (9), 238.535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.505(8) ~~[(9)]~~ authorizes a ~~[special]~~ charity fundraising event, such as a fair,

carnival, bazaar or festival, that is of short, definite and limited duration and requires licensure by the Division of Charitable Gaming. This administrative regulation ~~[further defines a special charity fundraising event, and]~~ establishes licensure requirements, prize amounts, duration and frequency.

Section 1. A special charitable fundraising event ~~[limited]~~ license shall be issued to a licensed charitable organization for the ~~[special]~~ charity fundraising event described in KRS 238.505(8) ~~[(9)]~~ if:

(1) The licensed charitable organization submits the satisfactorily completed CG-~~[T]~~-Schedule A ~~[referred to in 500 KAR 11:040 and 500 KAR 11:046];~~

(2) The total cash or fair market value of all prizes to be awarded at the event on games of chance does not exceed \$5,000, exclusive of charity game ticket prizes and bingo prizes awarded at a regularly scheduled bingo session, for which a change of location was approved by the division director pursuant to KRS 238.540(1); and

(3) The event does not last longer than five (5) continuous days.

Section 2. No more than two (2) special charity fundraising event licenses will be issued to any one (1) licensed charitable organization in one (1) year.

Section 3. There shall be no separate fee charged by the Division of Charitable Gaming for the issuance of a special charity fundraising event license.

Section 4. If special limited games are conducted at a ~~[special]~~ charity fundraising event, the licensed charitable organization shall also be licensed to hold the special limited games in accordance with KRS 238.545(4).

Section 5. If bingo is held at a ~~[special]~~ charity fundraising event licensed under Section 1(2) of this administrative regulation, the provisions of KRS 238.545(1) limiting the frequency and duration of bingo are inapplicable.

Section 6. A ~~[special]~~ charity fundraising event licensed under Section 1 of this administrative regulation may be held at a location other than the location specified on the charitable organization's license to conduct charitable gaming issued under KRS 238.535.

Section 7. Incorporation by Reference. (1) "CG-Schedule A, Application for Special Limited Charitable Gaming License/Special Charity Fundraising Event License (for use with Form CG-1) (6/96)", is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, Monday through Friday, 8 a.m. to 4:30 p.m.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: August 14, 1996

FILED WITH LRC: August 15, 1996 at 11 a.m.

JUSTICE CABINET
Division of Charitable Gaming
(As Amended)

500 KAR 11:110. Keno.

RELATES TO: KRS 238.505(17)

STATUTORY AUTHORITY: KRS ~~[238.505(17)]~~, 238.515(2), (9), 238.545(4), 238.550(1)

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish circumstances under which "special limited

charitable games" will be conducted. This administrative regulation establishes standards for the conduct of Keno, establishes reporting requirements, and establishes standards for the use of Keno equipment.

Section 1. Recordkeeping and Reporting Requirements. (1) For a period of thirty-six (36) months following the last date of the special limited charitable games, the charitable organization shall maintain accurate records as to the conduct of the Keno games. The records shall include:

- (a) The information contained in the transaction log;
 - (b) Payout information for each game played;
 - (c) The number draw and time of the draw for each game played;
 - (d) Appropriate system parameter information including probable payout percentages and odds of winning for each game played;
 - (e) System exception information including voids and late pays for each game played; and
 - (f) The exception log.
- (2) Other Keno records. The charitable organization shall retain all outside copies of winning tickets of \$500 or more for a period of thirty-six (36) months following the date of the Keno games.
- (3) At least once during each day of the special limited charitable games, **the organization shall generate an updated shift report, and at the conclusion of each day generate a daily report** ~~the computer shall automatically update and generate a "daily game summary report"~~, which shall be retained for a period of thirty-six (36) months following the date of the Keno games.

Section 2. Conduct of the Game - Keno. The following rules govern the conduct of Keno.

- (1) All individuals involved in any way in the conduct of Keno shall be trained in the proper conduct of the game and the control of funds.
- (2) Participation.
 - (a) No person under the age of eighteen (18) shall play or conduct the game of Keno.
 - (b) No individual involved in any capacity in the conduct of Keno at a charitable gaming event shall be permitted to play Keno at the same event and on the same day in which such individual was involved in the conduct of Keno.
 - (3) Only computerized Keno games may be conducted. Brush or manual games are prohibited.
 - (4) No player shall have access to, or be allowed to activate, the Keno equipment. Each number selected by the player, along with the amount wagered and the total numbers played shall be entered into the computer, and an outside ticket shall be presented to the player. The inside ticket shall be retained for such period deemed necessary by the Keno manager.
 - (5) Players shall mark the inside ticket with their number selections or selection by quick pick is permissible.
 - (a) Concurrently with the generation of the outside ticket, the information on the outside ticket shall be recorded on the transaction log.
 - (b) If a ticket is voided, the void information shall be input in the computer, and the computer shall document the appropriate information pertaining to the voided wager. A void slip shall then be issued, which shall be retained with the outside tickets to serve as documentation of the transaction.
 - (6) If the Keno equipment breaks down or malfunctions during the selection of the winning numbers and the problem is not promptly corrected, players shall be refunded the amount wagered upon presenting their outside ticket.
 - (7) Once the Keno manager is satisfied that all tickets for a game have been issued, the game shall be closed and all players shall be so notified. No tickets may be written or voided after a game has been closed and the number selection process has begun. Controls shall exist to prevent the writing and voiding of tickets after a game

has been closed and after the number selection process has begun.

(8) The potential payout or prize for each different type of wager shall be made known to the players prior to their selecting numbers. This may be done through posting the potential payouts in a manner clearly visible to the players or through a printed schedule that is available at each location where Keno is played.

(9) No ticket, including a way ticket, may be purchased representing a wager of over five (5) dollars, except that a multirace ticket may be purchased for an amount over five (5) dollars if the wager for each game does not exceed five (5) dollars.

(10) A statement indicating any time restrictions for redeeming a winning ticket shall be visibly posted at each location where Keno is played or printed on the outside ticket or the schedule of prize payouts.

(11) The outside ticket that is given to the player shall contain the following information:

- (a) Date of the game;
- (b) Numbers chosen by the player;
- (c) Ticket sequence number;
- (d) Conditioning of the ticket;
- (e) Station number where the ticket was generated;
- (f) Game number; and
- (g) The name of the charitable organization.

(12) A draw ticket shall be prepared by the computer.

(13) A player shall wait until the last game wagered on has been called in order to collect any winnings. A player may be allowed to play fewer consecutive games than originally indicated, if approval has been obtained from the Keno manager and the voided wagers are properly documented in the transaction log.

Section 3. Winner Verification. Winning tickets shall be verified prior to payout and paid in the following manner:

- (1) Procedures shall be established to preclude payment of a ticket previously presented for payment, unclaimed winning tickets after a specified period of time, voided tickets, and tickets which have not been issued.
- (2) The sequence number of a ticket presented for payment shall be input into the computer, and the payment amount shall be generated by the computer and shall be given to the player.
- (3) No payouts shall be made unless a winning outside ticket has been presented. If the payout amount is not indicated on the outside ticket, a payout slip shall be issued.
- (4) The exception log shall be produced and maintained documenting any payments made on tickets which have not been authorized by the computer.
- (5) In addition to computer system approval, winning tickets of fifty (50) dollars through \$250 shall be verbally verified by the Keno manager, winning tickets of over \$250 require the signature of the Keno manager and winning tickets of \$1,000 or more require approval of the Keno manager evidenced by his signature, the performance of comparison of the winning customer outside ticket to the transaction log and a regrading of the customer copy using the payout schedule and draw information.

Section 4. Security Standards and Controls. Access to the area in which Keno workers operate shall be restricted to charitable organization workers and authorized equipment service personnel only. Access to the computer system shall be adequately restricted, and the computer and Keno supplies shall be maintained under lock and key while not in use. These keys shall be maintained only by the designated chairperson of the charitable organization.

Section 5. Keno Tournaments Prohibited. Tournaments, whereby players pay an entry fee for a certain amount to play a number of Keno games and where prizes are awarded from a pool of entry fees paid back to the players based on their scores, are prohibited. Keno leagues played in a similar fashion as Keno tournaments are also

prohibited.

Section 6. Progressive Keno Games Prohibited. Games with a prize payout that increases by a predetermined percentage or amount as each game is played if the prize has not been awarded in a previous game are also prohibited.

Section 7. Prize Payouts. (1) No individual prize valued in excess of \$25,000 may be awarded in any Keno game.

(2) Every charitable organization shall have sufficient funds available to pay every winner of its Keno games by the end of the business day following the date such winning ticket is verified. Every winning prize shall be paid in full to the winning player and shall not be paid over a period of time or through an annuity, unless such annuity is the prize.

(3) For any prizes valued at \$10,000 or more, the charitable organization shall have sufficient funds insured or guaranteed by:

(a) An insurance company licensed to transact business in Kentucky;

(b) Money deposited into an insured account maintained by a financial institution and held in escrow for these purposes;

(c) An irrevocable letter of credit issued by a financial institution; or

(d) A bond from a bonding company registered to do business in Kentucky.

(4) If two (2) or more tickets fulfill the requirements for winning the largest prize on the same game, the full prize shall be divided equally among the winning tickets subject to any prize payout limit per game. Applicable prize payout limits shall be legibly posted at each location where Keno is played and printed on the schedule of prize payouts.

(5) All unclaimed prizes shall be the property of the charitable organization.

(6) All winning tickets of \$500 or more shall be paid to the player by check and not in cash, made payable to the order of the player.

(7) If there are multiple players on the same winning ticket and the prize is \$500 or more, the prize payment shall also be paid by a single check and not in cash, made payable to the order of the players.

Section 8. Payout Structure. Each game of Keno shall be conducted in such a manner that the probable payout percentage for each game shall not exceed seventy-five (75) percent.

Section 9. Keno Equipment Maintenance and Standards. (1) An effective maintenance plan shall be established to service Keno equipment, including computer program updates, hardware servicing, and Keno number selection equipment.

(2) With the exception of routine maintenance, all Keno equipment maintenance shall be performed by the manufacturer's or distributor's authorized service personnel. Routine maintenance shall include clearing of ticket printer paper jams, changing printer heads and cutter bars, and changing paper tape, adding paper to the ticket printer or aligning the paper on the ticket printer.

(3) A manufacturer or distributor shall not offer or market any type of Keno equipment unless the equipment complies with the requirements contained in this section.

(4) The division shall have the authority to request the testing and approval of any Keno equipment at any time if deemed necessary in order to ensure fairness to the public and maintain the integrity of the game.

(5) Hardware requirements.

(a) All electrical and mechanical parts and design principles shall follow acceptable industrial codes in standards in both design and manufacture.

(b) Logic boards and software EPROM's shall be in a locked or sealed area within the machine or in a separate machine. No access to this area is allowed by persons other than the manufacturer's or

distributor's authorized service personnel. Any unauthorized tampering or entrance into the logic area is prohibited.

(c) All PROMs and EPROMs shall have unique serial numbers that may be used to identify the PROMs and EPROMs for approval and inspection purposes. All logic boards shall have unique serial numbers or model numbers for approval and inspection purposes.

(d) A machine shall have a nonremovable identification label externally attached to the machine which includes the name of the manufacturer, the serial number of the machine and the model or make of the machine.

(6) Machine protection and integrity.

(a) A surge protector that feeds all power to the equipment shall be installed.

(b) The operation of the Keno equipment shall be impervious to influences from the outside of the device, including electro-magnetic interference, electro-static interference, and radio frequency interference.

(c) All computer functions and programs shall be secured in a locked and protective housing.

(d) The design of the Keno equipment shall ensure that there are no readily accessible game function related points which would allow any input and that there is no access to input or output circuits unless it is necessary for the proper operation of the equipment. No switches or other controlling devices may be added to the machine that would cause the machine to operate in a manner other than in which it was designed to play.

(7) Software requirements.

(a) The logic of the hardware or software may not interfere with the random number generator software.

(b) The software shall meet the minimum internal control standards for the conduct of Keno.

(c) Machine programs shall be capable of detecting corruption and shall provide an error message due to failure of the program storage media and cause the machine to cease play until corrected.

(d) All programs residing in the equipment shall be contained in a storage media which is not alterable through any use of the circuitry or programming of the machine itself.

(8) Retention of game data.

(a) No Keno equipment shall have a mechanism whereby an error will cause the game data to automatically clear. Game data shall be maintained at all times regardless of whether the machine is being supplied with power.

(b) Game data shall be stored in such a way as to prevent loss of the data when replacing parts or modules during normal maintenance.

(9) Random number generator. Random number generator selection device. A random number generator shall reside on a PROM or EPROM secured in the logic board of the computer. The numbers selected by the random number generator for each game shall be stored in the computer's memory and be capable of being output to produce a draw ticket with no manual input of the numbers required. Each possible combination of numbers which produce winning or losing game outcomes shall be available for random selection at the initiation of each game. The random selection process shall not produce any patterns of game outcomes, or be dependent upon any previous number selections or game outcomes, the amount wagered, or upon the style or method of play.

(10) Printer.

(a) The numbers that the player selects shall be printed on the outside ticket.

(b) The printer mechanism shall have a paper-sensing device that upon sensing a "paper low" condition will allow the machine to finish printing the ticket and then prevent further ticket writing.

(c) Each machine shall recognize a printer power loss occurrence and cease play until power has been restored to the printer and the machine is capable of producing a valid ticket.

(d) Printed game data shall be printed in ink that will remain

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legible throughout the retention period required by Section 1 of this administrative regulation.

E. DANIEL CHERRY, Secretary
APPROVED BY AGENCY: July 11, 1996
FILED WITH LRC: July 12, 1996 at 3 p.m.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (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, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorize[s] the Justice Cabinet and Department of Corrections [commissioner] to promulgate 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.

Section 1. Incorporation by Reference. (1)(a) Western Kentucky Correctional Complex policies and procedures, September 12, 1996 [July 12, 1996], are incorporated by reference.

(b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Western Kentucky Correctional Complex policies and procedures include:

| | |
|---------------|--|
| WKCC 01-02-01 | Public Information and Media Communication |
| WKCC 02-00-03 | Invoice and Voucher Processing |
| WKCC 02-00-04 | Monetary Receipts During Nonbusiness Hours |
| WKCC 02-00-06 | Purchasing Procedures [(Amended 7/12/96)] |
| WKCC 02-01-01 | Inmate Funds |
| WKCC 02-01-02 | Inmate Canteen [(Amended 7/12/96)] |
| WKCC 02-02-01 | Agency Funds and Accounting Procedures [(Amended 7/12/96)] |
| 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 [(Amended 7/12/96)] |
| 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 [(Amended 7/12/96)] |
| WKCC 11-00-03 | Food Service Inspections, Sanitation, Purchasing, and Storage of Food |
| WKCC 11-00-04 | Food Service Security [(Amended 7/12/96)] |
| 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 [(Amended 7/12/96)] |
| WKCC 13-00-01 | Special Health Programs [(Amended 7/12/96)] |

| | |
|----------------------|--|
| WKCC 13-01-01 | Use of Pharmaceutical Products [(Amended 7/12/96)] |
| WKCC 13-02-01 | Health Care Services [(Amended 7/12/96)] |
| WKCC 14-04-01 | Legal Services Program |
| WKCC 14-06-01 | Inmate Grievance Procedure |
| WKCC 15-01-01 | Hair and Grooming Standards |
| WKCC 16-01-01 | Visiting Policy and Procedures |
| WKCC 16-02-01 | Inmate Correspondence |
| WKCC 16-03-01 | Inmate Access to Telephones [(Amended 7/12/96)] |
| WKCC 16-04-01 | Inmate Packages [(Amended 2/13/96)] |
| <u>WKCC 17-01-01</u> | <u>Inmate Personal Property (Added 10/7/96)</u> |
| WKCC 17-02-01 | Inmate Reception and Orientation [(Amended 7/12/96)] |
| WKCC 20-01-01 | Education Program <u>(Amended 9/12/96)</u> |
| WKCC 22-00-01 | Inmate Recreation and Leisure Time Activities <u>(Amended 9/12/96)</u> |
| 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 [(Amended 7/12/96)] |

Section 2. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: August 22, 1996

FILED WITH LRC: September 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1996, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 1996, five (5) 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 this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2204, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 146 employees of the correctional institutions, 410 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

- (a) Direct and indirect costs or savings:
 - 1. First year: None
 - 2. Continuing costs or savings: None
 - 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: Policy revisions.
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.
- (6) Economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: N/A
- (9) 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: N/A
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (10) Any additional information or comments: None
- (11) TIERING: Is 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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended)

804 KAR 13:010. Tobacco enforcement and administration.

RELATES TO: KRS Chapter 13B, 438.310, SB 137, EO 96-619
 STATUTORY AUTHORITY: KRS 438.340, EO 96-619
 NECESSITY, FUNCTION, AND CONFORMITY: SB 137, enacted by the 1996 General Assembly, became effective March 5, 1996. SB 137 requires a seller of tobacco products to obtain proof of the age of a prospective buyer recipient of tobacco products if he has reason to believe the prospective buyer or recipient is under eighteen (18) years old; requires the establishment of the types of documentation accepted as proof of age, notification of the employees of a seller of tobacco products of the requirements of SB 137, administrative proceedings in the enforcement of SB 137, and the collection of statistics relating to the illegal sale to minors of tobacco products and enforcement of SB 137.

Section 1. Definition. "Department" means the Department of Alcoholic Beverage Control.

Section 2. Administration. The department shall be the administrative agency for hearing violations of KRS 438.305 to 438.340.

Section 3. Enforcement. (1) The department shall record and investigate complaints relating to violations of KRS 438.305 to 438.340.

(2) The department shall prepare an annual survey from data obtained from the annual inspection directed by KRS 438.330(1). The survey shall be prepared to determine the existing level of tobacco sales to minors. A copy of the report shall be submitted to the Department of Agriculture. ~~[The department shall enforce the provisions of KRS 438.305 to 438.340 by random inspection conducted by duly qualified enforcement officers and agents of the department.]~~

~~(3) The department may employ underage buyers to participate in enforcement activities. The participation of the underage buyers shall be contingent upon a written consent and release from his or her parents or legal guardian, and upon the completion of enforcement training to be conducted by the department.~~

~~(4) The department shall conduct annually random base line sampling to determine the existing level of tobacco sales to minors on or before June 30 of each fiscal year. A copy of the annual survey shall be submitted to the Department of Agriculture.]~~

~~(3) [(5)]~~ The result of the annual survey may be inspected, copied or obtained at the office of the Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday, excepting state holidays.

Section 4. Procedures. (1) A person found to be violation of KRS 438.305 to 438.340 may be cited by the department. Any administrative citation shall conform to the requirements of KRS Chapter 13B.

(2) A person receiving an administrative citation pursuant to KRS 438.305 to 438.340 may request an administrative hearing, to be conducted by the department, to contest the allegation in the citation. The department may, in its discretion, employ one (1) or more hearing officers to conduct the administrative hearings. All administrative hearings shall be governed by KRS Chapter 13B.

(3) A fine levied pursuant to an administrative citation shall be prepayable within thirty (30) days of issuance of the citation. A person not wishing to contest the allegations in the citation may resolve the charge by mailing a check or money order in the amount set forth in the citation, payable to the Kentucky State Treasurer, to the hearing agency name and address set forth in the citation.

(4) Disposition of juvenile records. The department shall preserve the confidentiality of all juvenile records by maintaining ~~[Juvenile records shall be maintained in]~~ a separate filing system, under lock and key, with access limited to the parties and their legal counsel. ~~[Juvenile records shall be destroyed one (1) year after the case is conducted, with all avenues of appeal exhausted.]~~ The department shall maintain statistical summaries of case information, including date of buy, geographical location of buy, name and address of retail seller, date of purchase, date of birth and gender of underage buyer, and disposition of case. Statistical summaries relating to underage buyers shall not identify the underage buyer by name.

(5) Physical evidence seized in the course of administrative violations of KRS 438.305 to 438.340 shall be maintained by the department in a secured evidentiary storage facility. ~~[The department may destroy evidence related to a case thirty one (31) days after the case is concluded, with all avenues of appeal exhausted.]~~

~~[Section 5. Appeal. A person aggrieved by the final ruling of the department may appeal such ruling to the Franklin Circuit Court, Frankfort, Kentucky 40601 within thirty (30) days of the rendition of such ruling.]~~

LAURA DOUGLAS, Secretary
GREG GINTER, Commissioner
APPROVED BY AGENCY: June 24, 1996
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CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Health Systems Development
(As Amended)

902 KAR 14:070. License procedures and fee schedule for ambulance providers [and tiered response emergency medical services].

RELATES TO: KRS 211.950 to 211.956, ~~[211.958,]~~ 216B.010 to 216B.130, 216B.990

STATUTORY AUTHORITY: KRS Chapter 13B, 211.952, 216B.020(4), 216B.042, 216B.095, 216B.105, 216B.410, EO 96-862, 1996 Ky. Acts ch. 233

NECESSITY AND FUNCTION: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 216B.042 and 216B.105 requires [mandate] that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. KRS 211.952 requires the cabinet to establish [transfers the responsibility for licensing ambulance providers defined in KRS 211.950 to] a single lead agency within the Department for Public Health, with the responsibility for promulgating administrative regulations for licensing, inspecting, and regulating ambulance providers. [Health Services, Cabinet for Human Resources]. This administrative regulation provides specific requirements for obtaining and maintaining a license to operate an ambulance service [or a tiered response emergency medical service] and establishes the fee schedule for a license.

Section 1. Definitions. (1) "Advanced life support (ALS)" means ~~[an ambulance provider which:~~

~~(a) Utilizes] certified and licensed emergency medical professionals who [to] provide prehospital medical care such as:~~

(a) [4-] Basic life support services;

(b) [2-] Advanced airway management such as endotracheal intubation;

(c) [3-] Defibrillation; and

(d) [4-] Administration of intravenous fluids and pharmaceuticals under the authority of a physician medical director[; and

~~(b) Meets the requirements established in 902 KAR 14:080, Sections 1 through 10 and is licensed by the cabinet to provide health care and transportation on an emergency and nonemergency basis to persons who:~~

~~1. Are sick, injured, or otherwise incapacitated; and~~

~~2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being[.]~~

(2) "Ambulance service" means an ambulance provider as defined in KRS 211.950(2) and 211.952(2)(c)1, 2, 3, and 4. ["Air ambulance provider" means a basic life support or ALS air ambulance service which meets the requirements of 902 KAR 14:090 and is licensed by the cabinet to provide basic, advanced, or basic or advanced specialized levels of emergency and non-emergency health care and transportation.]

(3) "Basic life support" (BLS) means ~~[a basic life support ambulance provider which:~~

~~(a) Utilizes at least two (2)] certified or licensed emergency medical personnel who [to] provide prehospital medical care such as:~~

(a) [1-] First aid;

(b) [2-] Cardiopulmonary resuscitation;

(c) [3-] Airway management;

(d) [4-] Cervical spine control;

(e) [5-] Breathing assistance;

(f) [6-] Hemorrhage control; and

(g) [7-] Basic patient movement procedures[; and

~~(b) Meets the requirements established in 902 KAR 14:080, Sections 1 through 7 and 8, when applicable, and is licensed by the cabinet to provide health care and transportation on an emergency and nonemergency basis to persons who:~~

~~1. Are sick, injured, or otherwise incapacitated; and~~

~~2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being[.]~~

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "Licensing agency" means the Cabinet for Health Services [Human Resources], Department for Public Health [Health Services].

(6) "Nonemergency health transportation (NEHT)" means an ambulance provider which meets the requirements of 902 KAR 14:060 and is licensed by the cabinet to provide health care transportation on a scheduled basis to individuals whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for emergency medical treatment during transit or emergency medical treatment upon arrival at the final destination. NEHT providers shall not transport a patient who requires basic or advanced life support or a patient who has in place a temporary invasive device or equipment such as an intravenous administration device or airway maintenance device, excluding urinary catheters, or a patient who requires close observation or monitoring preceding or following an invasive technique.

(7) "Specialized ground ambulance provider" means a Class I, Class III, [BLS or ALS ground] or air ambulance provider which ~~[meets the requirements of 902 KAR 14:080, Section 11 or 902 KAR 14:090 and]~~ is licensed by the cabinet to provide health care and transportation on an emergency or nonemergency scheduled basis that:

~~(a) May be unavailable to the general public; and~~

~~(b) Has specialized or limited functions such as interfacility transfer of critical patients who may require special consideration of:~~

~~1. Equipment requirements;~~

~~2. Personnel requirements; or~~

~~3. Hours of operation.~~

~~[(8) "Tiered response emergency medical (TREM) services" means a specialized nontransportation ALS emergency medical service which shares staff and equipment with a licensed ALS or BLS ambulance provider through a written agreement for operation within a specific geographic service area.]~~

Section 2. Licenses. (1) A person shall not establish a BLS or ALS ground ambulance service, BLS or ALS air ambulance service, or NEHT service~~[; or a TREM service]~~ in Kentucky without first obtaining a certificate of need, except as provided in Section 5 of this administrative regulation, [from the Kentucky Health Policy Board (referred to as the board)] and shall not operate a BLS or ALS air or ground ambulance service, or NEHT service~~[; or TREMS]~~ without first obtaining a Kentucky Ambulance License, Form EMS-2 (12/94), incorporated by reference, from the licensing agency.

(2) Effective July 15, 1996, the licensing agency shall not license a new BLS or ALS ground ambulance service.

(3) Effective December 31, 1996, the licensing agency shall not license a new NEHT service.

(4) Effective July 15, 1996, the following classes of ambulance providers shall be licensed: Class I, Class II, Class III, Air, or NEHT. A person shall not establish a Class I, Class II, Class III, or air ambulance service in Kentucky without first obtaining a certificate of

need, except as provided in Section 5 of this administrative regulation, and shall not operate a Class I, Class II, Class III, or air ambulance service without first obtaining a Kentucky Ambulance License, Form EMS-2 (6/96), incorporated by reference, from the licensing agency.

(5) The license shall be conspicuously posted in a public area of the facility.

(6) An ambulance provider shall file an application with the Department for Public Health, Emergency Medical Services Branch, 275 East Main Street, Frankfort, Kentucky 40621 in accordance with the following schedule:

(a) An ambulance provider licensed prior to July 15, 1996 shall file ~~(a)~~ a "Kentucky Application for Ambulance Service Licensing", Form EMS-1 (10/94), incorporated by reference.

(b) An ambulance provider licensed after July 15, 1996 shall file a "Kentucky Application for Ambulance Service Licensing", Form EMS-1 (6/96), incorporated by reference.

(c) An ambulance provider licensed as a NEHT service prior to December 31, 1996 shall file ~~(c)~~ an "Application for License to Operate a Nonemergency Health Transportation Service", Form EMS-1N (12-94), incorporated by reference ~~(c)~~ ~~shall be filed with the Department for Health Services, Emergency Medical Services Branch, 275 East Main Street, Frankfort, Kentucky 40621.~~

(7) ~~(4)~~ An applicant for a license shall, as a condition precedent to licensing or relicensing, be in compliance with applicable administrative regulations under 902 KAR Chapter 14.

(8) ~~(6)~~ The licensee shall, as a condition of licensing or relicensing, be in compliance with the reporting requirements established by the licensing agency ~~and the board~~, unless otherwise exempted by statute:

(9) ~~(6)~~ The licensee shall maintain and submit completed reports required by:

(a) KRS 216B.410;

(b) 902 KAR 14:080 ~~[44:040]~~, Section 3(2)(a);

(c) 902 KAR 14:082, Section 3(2)(a) ~~[44:050, Section 6]~~;

(d) 902 KAR 14:084; or

(e) 902 KAR 14:090, Section 10; and

(f) The licensing agency ~~or~~

~~(e) The Kentucky Health Policy Board.~~

(10) ~~(7)~~ A license shall expire one (1) year following the date of issuance, unless otherwise provided in the license certificate.

(11) ~~(8)~~ A license may be renewed upon payment of the prescribed fee and compliance with the provisions for licensing.

(12) ~~(9)~~ A license to operate shall be issued only for the person, service area, and premises, including the number of ambulances named in the application, and shall not be transferable.

(13) ~~(10)~~ A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of an existing facility, capital stock, or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another.

(14) ~~(11)~~ Upon filing a new application for a license due to change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee shall be charged for the remainder of the licensure period.

(15) ~~(12)~~ There shall be full disclosure to the licensing agency of the changes, such as name and address, of:

(a) A person having direct or indirect ownership interest of ten (10) percent or more in the service;

(b) Officers and directors of the corporation, if a service is organized as a corporation; and

(c) Partners, if a provider is organized as a partnership.

Section 3. Licensing Inspections. (1) Compliance with licensing administrative regulations may ~~shall~~ be ascertained through on-site inspections of the provider by representatives of the licensing agency.

(2) Representatives of the licensing agency shall have access to the service during hours the service operates.

(3) A regulatory violation identified during an inspection ~~(the inspections)~~ shall be transmitted in writing to the provider by the licensing agency.

(4)(a) The provider shall submit a written plan for the elimination or correction of the regulatory violations to the licensing agency within ten (10) days of receipt of the statement of violation.

(b) The plan shall specify the date by which the violation shall be corrected.

(5)(a) Following a review of the plan, the licensing agency shall notify the provider in writing of the acceptability of the plan. The licensing agency may conduct a follow-up visit to verify compliance with the plan.

(b) If a portion or all of the plan is unacceptable, the licensing agency shall specify the reasons for the unacceptability. The provider shall modify or amend the plan and resubmit it to the licensing agency within ten (10) days after receipt of notice that the plan is unacceptable.

(6) Unannounced inspections may be conducted on complaint allegations, follow-up visits, and ~~annual~~ relicensing inspections. Inspections shall be conducted utilizing the procedures outlined under this section.

(7) The licensing agency may deny, revoke, modify, or suspend the license of a provider which:

(a) Fails to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;

(b) Fails to eliminate or correct regulatory violations;

(c) Falsifies an application for licensing;

(d) Tampers with, alters, or changes a license issued by the licensing agency;

(e) Attempts to obtain or obtains a license by fraud, forgery, deception, misrepresentation, or subterfuge;

(f) Provides false or misleading advertising;

(g) Falsifies, or causes to be falsified, a patient record or ambulance run report;

(h) Provides an unauthorized level of service;

(i) Has a history of staff violations which have resulted in disciplinary action under 902 KAR 13:020 and 13:090;

(j) Fails to provide the licensing agency or its representative with true information upon request, or obstructs an investigation regarding alleged or confirmed violations of administrative regulations promulgated under:

1. KRS 211.950 to 211.958;

2. KRS 211.960 to 211.968;

3. KRS 211.990(5); and

4. KRS 216B; and

5. KRS 311.654; or

(k) Issues a check for a license on an invalid account or an account with insufficient funds to pay the fee specified in Section 4 of this administrative regulation.

(8) The licensing agency may issue an order directing a provider to immediately cease and desist operating an ambulance, or providing services, if the licensing agency has reasonable cause to believe that an ambulance or service is unsafe or is being operated in an unsafe or unprofessional manner that is likely to cause harm or create imminent danger to the health and safety of the public.

(9) The licensing agency ~~or the board~~ may deny, revoke, modify, or suspend the license of an ambulance provider if an owner of the service is convicted of obtaining a fee by:

1. Fraud or misrepresentation; or

2. Submitting fraudulent or misleading claims for reimbursement to individuals, private insurance companies, or governmental agencies;

(10) The licensing agency shall provide notice and an opportunity for an administrative hearing related to denial, revocation, modification, or suspension of a license in accordance with the provisions ~~(c)~~

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1. Policies and administrative regulations of the board; and
2. Provisions of KRS 216B.105.

Section 4. Fee Schedule. The annual licensing fee, including renewals, shall be as follows:

- (1) Nonvolunteer ambulance providers ~~[and T-REM service]~~: eighty (80) dollars;
- (2) Volunteer ambulance providers ~~[and T-REM service]~~ in which a majority of the ambulance runs are made by attendants who do not receive compensation for their work: twenty (20) dollars.

Section 5. Licensing Without a Certificate of Need. (1) A person proceeding to alleviate emergency circumstances pursuant to 900 KAR 6:010, Section 9, may be granted a temporary license to operate an ambulance service in Kentucky pending the approval or disapproval of his application for a certificate of need. The temporary license shall expire forty-five (45) days after notice of approval of the certificate of need or thirty (30) days after notice of disapproval of certificate of need.

(2) An ambulance service owned and operated by a city government which provides services in coterminous cities outside the ambulance service's designated service area pursuant to KRS 216B.020(4) may be licensed in accordance with the provisions of this administrative regulation without a certificate of need as if they had a certificate of need.

Section 6. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health [Services], 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday:

- (1) Kentucky Ambulance License, Form EMS-2 (12/94).
- (2) Kentucky Application for Ambulance Service Licensing, Form EMS-1 (10/94).
- (3) Application for License to Operate a Nonemergency Health Transportation Service, Form EMS-1N (12/94).
- (4) Kentucky Ambulance License, Form EMS-2 (6/96).
- (5) Kentucky Application for Ambulance Service Licensing, Form EMS-1 (6/96).

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 4 p.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Health Systems Development
(As Amended)

902 KAR 14:080. Class I [Basic and advanced life support] ground ambulance providers.

RELATES TO: KRS 211.950 to 211.956 ~~[211.958]~~, 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 211.952, **216B.020(4)**, 216B.042, **216B.095**, EO 96-862, 1996 Ky. Acts ch. 233

NECESSITY AND FUNCTION: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 216B.042 requires [mandates] that the Cabinet for Health Services regulate [Human Resources promulgate administrative regulations and set standards related to licensing] health facilities and health services. KRS 211.952(2)(c) requires the cabinet to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers. [transferred the

responsibility for licensing, regulating and inspecting ambulance providers defined in KRS 211.950 from the Division of Licensing and Regulation in the Office of Inspector General to a single lead agency within the Department for Health Services, Cabinet for Human Resources.] This administrative regulation provides for the minimum licensing requirements for Class I [basic or advanced] ground ambulance providers.

Section 1. Definitions. (1) "Advanced life support (ALS)" means a Class I ground ambulance provider which:

(a) Utilizes certified and licensed emergency medical professionals to provide prehospital medical care such as:

1. Basic life support services (BLS);
2. Advanced airway management such as endotracheal intubation;
3. Defibrillation;
4. Administration of intravenous fluids and pharmaceuticals under the authority of a physician; and

(b) Meets the requirements established in Sections 1 through 10 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency basis ~~[to persons who:~~

1. Are sick, injured, or otherwise incapacitated; and
2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being].

(2) "Back-up ambulance" means an ambulance as defined in KRS 211.950 which complies with the requirements of Section 4(5) through (9) of this administrative regulation, and is licensed by the cabinet to provide emergency care and transportation if:

(a) One (1) of the licensed primary ambulances is not in service; and

(b) All of the primary ambulances are on runs and extreme circumstances dictate its use.

(3) "BLS" means a ground ambulance provider which:

(a) Utilizes at least two (2) certified or licensed emergency medical personnel to provide prehospital medical care such as:

1. First aid;
2. Cardiopulmonary resuscitation;
3. Airway management;
4. Cervical spine control;
5. Breathing assistance;
6. Hemorrhage control; and
7. Basic patient movement procedures; and

(b) Meets the requirements established in Sections 1 through 7 and Section 8, if applicable, of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency basis ~~[to persons who:~~

1. Are sick, injured, or otherwise incapacitated; and
2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being].

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association; the National Safety Council; or the basic life support professional rescuer course of the American Red Cross, which shall include as a minimum one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(6) "Dispatch center" means the location where:

(a) Incoming calls are initially received requesting an ambulance; and

(b) Contact is made with the ambulance provider for direction to the patient scene.

(7) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 13:100.

(8) "Emergency medical technician-first responder" means a person certified pursuant to 902 KAR 13:110.

(9) "Employee" means ambulance provider medical personnel who may be paid or volunteer, full time or part time.

(10) "Interfacility care" means BLS or ALS emergency or nonemergency health care provided to a patient during ambulance transportation between two (2) health care facilities.

(11) "Licensing agency" means the Cabinet for Health Services ~~(Human Resources)~~, Department for Public Health ~~(Health Services)~~.

(12) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 9:136.

(13) "Prehospital care" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(14) "Primary ambulance" means an on ground ambulance as defined in KRS 211.950(1) which is licensed by the cabinet to be a principle vehicle utilized by an ambulance provider for the provision of:

- (a) Emergency care and transportation; or
- (b) Nonemergency runs.

(15) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(16) "Provider" means a Class I ground ambulance provider as defined in KRS 211.950(2), and 211.952(1)(c)2.

(17) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin (e.g., needles, glass ampules, etc.).

(18) ~~(17)~~ "Specialized ground ambulance provider" means a Class I [BLS or ALS] ground ambulance provider which meets the requirements of Section 11 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on a emergency or scheduled basis that:

- (a) May be unavailable to the general public; and
- (b) Has specialized or limited functions such as interfacility transfer of critical patients who may require special consideration of:
 - 1. Equipment requirements;
 - 2. Personnel requirements;
 - 3. Hours of operation.

~~(18) "Tiered response emergency medical (TREM) service" means a specialized nontransportation ALS emergency medical service which shares staff and equipment with a licensed ALS or BLS ambulance provider through a written agreement for operation within a specific geographic service area.]~~

Section 2. Class I Ground Ambulance Licensing Requirements.

(1) The following licensing requirements shall apply to Class I [BLS and ALS ground ambulance] providers:

(a) A person shall not provide, advertise, or profess to engage in the provision of Class I [BLS, ALS], or specialized Class I [BLS or ALS] emergency medical care or transportation that originates in Kentucky without having first obtained a certificate of need and a license from the cabinet [licensing agency].

(b) An ambulance provider shall comply with local, state, and federal statutes and regulations.

(c) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

- 1. Identity and location of the base station;
- 2. Number and location of substations, if any, to be operated by the licensee;
- 3. Designation of the specific geographic area to be served by the licensee, allowing for a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area for all emergency calls. The provider shall not be precluded from responding to calls outside of its geographic service

area when providing:

- a. Mutual aid to another ambulance provider;
- b. Disaster assistance;
- c. Nonemergency transfers from damaged or closed health facilities; or
- d. Interfacility care to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area or transporting them to another health facility;

4. Designation of the levels of care which the ambulance provider shall be authorized to provide (i.e., BLS or ALS, or specialized BLS or ALS); and

5. Designation of the number of primary ~~[and back-up]~~ ambulances to be operated by the ~~[BLS or ALS ambulance]~~ provider.

(d) ~~[Upon the effective date of this administrative regulation,]~~ No new or replacement back-up ambulances shall be licensed. A ~~[(e) Effective January 1, 1996, each ambulance]~~ provider with currently licensed back-up ambulances shall, upon application for renewal of the license, declare the total number of ambulances to be operated with no distinction made between primary and back-up vehicles. This total shall not exceed the total number of ambulances previously licensed.

(f) Each ambulance licensed shall be staffed, equipped, and available to respond to emergency ~~[and nonemergency]~~ calls at all times.

(g) ~~[As a minimum,]~~ Each ambulance provider shall provide the licensing agency with the serial number and license tag number of each ambulance licensed.

(h) The licensee shall:

- 1. Notify the licensing agency of any change in the number, type, or use of the ambulances to be operated; and
- 2. Meet the following requirements:

a. An ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that it meets the requirements of this administrative regulation. If the ambulance represents an expansion of service (e.g., an increase in the number of ambulances), the licensing agency shall verify that a certificate of need has been granted prior to the inspection; and

b. The licensing agency shall be notified, on the next licensing agency business day, following disposition of any prior approved ambulance operated by the ambulance provider (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance provider).

(i) The licensing agency procedures shall not preclude the ambulance provider from utilizing a replacement ambulance on a temporary basis if a previously approved ambulance is out of service for maintenance. The following requirements shall apply:

1. The licensing agency shall be immediately notified (or on the next business day) by phone of the need for an ambulance provider to operate a temporary replacement unit. Within five (5) days, the ambulance provider shall send the licensing agency:

a. Written notice of the make, model, license number, and vehicle identification number; and

b. Assurances that the temporary replacement ambulance meets the [unit will be staffed and equipped in accordance with] requirements of this administrative regulation;

2. A temporary replacement ambulance shall not be utilized for more than thirty (30) days unless the licensing agency has verified, through a physical inspection, that it meets the requirements of this administrative regulation.

3. If the ambulance provider plans to utilize the replacement ambulance for more than thirty (30) days, the ~~[ambulance]~~ provider shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

4. ~~[3.]~~ The licensing agency shall be notified if the replaced unit is back in service.

(j) The licensing agency shall maintain identifying records on all ambulances according to established procedures.

(2) A licensed Class I [BLS or ALS ground ambulance] provider shall have on file proof of professional and vehicular liability insurance.

(3) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);

(b) A vehicle serving as an ambulance during a major catastrophe;

(c) An ambulance operated by the United States government; ~~and~~

(d) An ambulance from an out-of-state licensed ambulance provider making a nonemergency run originating from a Kentucky facility for the purpose of returning a patient who is not a Kentucky resident to his state of residence;

(e) A person proceeding to alleviate emergency circumstances pursuant to 900 KAR 6:010, Section 9; and

(f) An ambulance service owned and operated by a city government which provides services in coterminous cities outside the ambulance service's designated service area pursuant to KRS 216B.020(4).

Section 3. Class I [BLS and ALS Ground Ambulance] Management Requirements. A Class I [An] ambulance provider shall:

(1) Establish lines of authority (i.e., an organizational chart) to include the designation of an:

(a) Administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(2) Maintain adequate records and reports at the ambulance service base station to be made available for review as deemed necessary by the cabinet, including:

(a) An original, microfilm, electronic equivalent as authorized under KRS 216B.410(1), or similar copy procedure of EMS run form, EHS-8A "Kentucky Emergency Medical Service Ambulance Run Report", for all runs originating in Kentucky.

1. Copies of completed run report forms shall be kept as required by KRS 216B.410(1) and guidelines established by the licensing agency in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

2. The third copy of the run form, or an electronic equivalent, shall be forwarded to the cabinet within thirty (30) days following the end of the month in which the run occurred.

(b) Personnel files on each ambulance driver and attendant shall be maintained for:

1. A minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

2. Five (5) years following the demise of the employee.

(c) Individual ambulance driver and attendant personnel files shall, as a minimum, contain evidence of:

1. Training;

2. Experience;

3. Current credentials including proof of CPR certification, or EMT or paramedic certification with corresponding numbers and expiration dates, or nursing or physician license;

4. Current and valid driver's license;

5. A preemployment criminal and Department of Transportation driver's records check for each individual added to the service ~~[after the effective date of this administrative regulation];~~

6. Health records to include:

a. Written evidence of a preemployment health assessment

having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and

b. Health records which ~~[at a minimum]~~ meet the requirements of KRS 216B.410(3).

(3) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the ambulance provider in order to assess their effectiveness. The policies and procedures shall be developed to include the following [minimum] areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Ambulance service mutual aid agreements and agreements with other ambulance providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, ambulance, equipment, and staff if called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for the quality assessment of patient care including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

1. Vehicle maintenance;

2. Standard operating procedures (SOPS);

3. Patient protocols;

4. Ambulance response;

5. Transport limitations; and

6. Patient destination.

Section 4. Class I [BLS and ALS Ground Ambulance] Operating Requirements. (1) A Class I [BLS or ALS] ambulance provider shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week, basis. This provision may be met through a call system or by a written mutual aid agreement with another Kentucky licensed Class I ambulance provider. The following priorities shall be followed for establishing a mutual aid agreement:

(a) A Class I provider which is licensed to serve the same service area;

(b) A Class I ground ambulance provider which serves part of the same service area or a contiguous service area.

(2) A Class I ground ambulance provider may also enter into additional mutual aid agreements with other Kentucky licensed Class I ground ambulance providers on an occasional basis to meet the needs of its service area for providing scheduled nonemergency transportation.

(3) If a Class I ground ambulance provider is unable to respond to an emergency call, the provider shall activate their mutual aid agreement with the closest available Class I ground ambulance provider.

(4) If a Class I ground ambulance provider receives and declines a request for an emergency interfacility transfer, the licensee shall activate its mutual aid agreement. If none of the mutual aid partners are willing or able to accept the emergency interfacility transfer, any Kentucky licensed Class I ground ambulance provider may accept the transfer.

(5) A provider who accepts a transfer outside of its service area

shall require documentation from the facility or the provider licensed for the service area indicating that a good faith effort was made to utilize the provider licensed for the area.

(6) ~~((2))~~ If a Class I [BLS or ALS licensed] ambulance provider also makes nonemergency runs, at least [a minimum of] one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the geographic service area of the licensee. ~~[The licensee may enter into a written mutual aid agreement with another licensed BLS or ALS ambulance provider as a means to meet this requirement. If the only remaining ambulance of a licensee is being held in reserve for emergency prehospital runs, the licensee shall activate its mutual aid agreement if it receives and declines an emergency interfacility transfer request.]~~

(7) ~~((3))~~ In areas where fire departments, rescue squads, or other organizations provide first response to medical emergencies, in order to provide for the coordinated delivery of emergency medical services and the orderly transfer of patients to the ambulance service upon their arrival, the Class I [BLS or ALS] ambulance provider [which responds to medical emergencies for that area] shall enter into a mutual aid agreement with the first response organization. These agreements shall be in writing and shall address the following:

(a) The type of mutual aid assistance to be provided (e.g., ALS or BLS medical care, ~~[ambulance service, tiered]~~ ALS or BLS medical first response, extrication);

(b) Response personnel including levels of training and provisions for joint in-service training where appropriate;

(c) Response vehicles including unit identifiers and the station or location from which the vehicles will be operated;

(d) How and what manner the mutual aid agreement shall [will] be activated including dispatch and notification procedures;

(e) Radio and other communications procedures between the ambulance provider and the other response agency;

(f) On-scene coordination and scene control including medical direction when several agencies respond to same incident;

(g) Exchange of patient information, records, and reports;

(h) Terms of the agreement including effective date and provision for amendment or termination.

(8) ~~((4))~~ Ambulances used in the provision of Class I [BLS or ALS] ambulance services shall:

(a) Be maintained in good operating condition and in full repair;

(b) Be designed to provide for the medical care and transportation of patients;

(c) Comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-A-1822 D (11/94) (GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification.

(d) Comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(9) ~~((5))~~(a) The Class I [BLS or ALS] ambulance provider shall require that a certification decal or sticker be supplied by the manufacturer of newly purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(b) A Class I [BLS or ALS] ambulance provider shall require, for units that are later modified, the conversion company to supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(10) ~~((6))~~ In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

(b) The air conditioning system shall maintain a temperature of

not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

(c) The name of the ambulance provider shall appear on the exterior surface of the ambulance.

(11) ~~((7))~~(a) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(b) Documentation shall be maintained by the ambulance provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(12) ~~((8))~~ The interior of the ambulance and its equipment shall be checked after each use to ensure that they are kept and maintained in a clean and sanitary condition, unless precluded by emergency conditions.

(13) ~~((9))~~ Nothing in this administrative regulation shall be construed to prevent a licensed Class I [BLS or ALS ambulance] provider from providing medical [tiered] first response emergency prehospital care [medical service] at or below the level for which they are licensed through the utilization of the following:

(a) Designated, provider owned response vehicles;

(b) Provider or personally owned supervisor vehicles;

(c) Employee personally owned vehicles.

(14) ~~((10))~~ The licensed Class I [BLS or ALS ground ambulance] provider shall determine the minimum equipment required for tiered response vehicles operating under their license.

(15) Class I medical [(11) BLS or ALS ground ambulance service tiered] first response vehicles shall be operated in accordance with the provisions of KRS 189.910 to 189.950.

(16) ~~((12))~~ Vehicles used to provide medical [tiered] first response [emergency medical] services shall be insured by the employee or through the insurance policies of the Class I [BLS or ALS ground ambulance] provider.

(17) ~~((13))~~ A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:

(a) If a local or regional dispatch center or 911 arrangement exists for all or part of the service area of a provider, the ambulance provider shall have a signed affiliation agreement with the dispatch center for coordination of emergency calls. If an ambulance provider is unable to secure a written affiliation agreement with the dispatch center, the ambulance provider shall have on file proof of a good faith attempt to obtain an affiliation agreement;

(b) A Class I ambulance [BLS and ALS ambulances] shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting the ambulance dispatch center and the receiving hospital;

(c) A minimum of one (1) portable communication device per ambulance, on the ambulance radio frequency, shall be provided for personnel if away from the ambulance;

(d) A Class I [BLS or ALS ambulance] provider shall have an acceptable plan to assure that all calls are promptly answered, and runs are dispatched in an expedient manner in accordance with subsection (1) of this section; and

(e) An ambulance provider shall provide orientation to all drivers and attendants related to communication protocols that have been established by the service.

(18) ~~((14))~~(a) In accordance with policies and procedures of the Class I [BLS or ALS ambulance] provider concerning patient destination and ambulance response and transport limitations, a patient shall be transported to:

1. The hospital emergency room of the patient's choice; or

2. The hospital emergency room chosen by the patient's physician.

(b) Nothing in this subsection shall preclude Class I [BLS or ALS ambulance] provider personnel from transporting a patient to:

1. A hospital emergency room other than the one (1) chosen by

the patient or his doctor, or an appropriate emergency medical facility chosen by the attendant, if the attendant determines that it shall be necessary in order to save the patient's life or limb.

2. A hospital emergency room or emergency medical facility other than the one (1) chosen by the patient or his physician if the Class I [ambulance] provider is operating under an approved local or regional diversion plan or medical triage protocols developed in conjunction with a consortium of physicians, hospitals, and ambulance providers, and which has been approved by the Kentucky Emergency Medical Services Council under KRS 211.952(5).

(c) The Kentucky emergency medical service ambulance run report form (EHS-8A) shall require ambulance service personnel to state:

1. The name and city of the hospital to which the patient was transported; and
2. If the destination was chosen by the:
 - a. Patient;
 - b. Patient's physician; or
 - c. Medical service personnel. If the destination was chosen by the medical service personnel, the attendant shall document the medical necessity on the form's case narrative section.

Section 5. Basic Life Support Personnel. (1) A BLS Class I [ground-ambulance] provider shall be staffed to provide, at least [as a minimum] two (2) attendants for each run. One (1) attendant shall remain with the patient at all times during transport;

(2) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation; and

(3) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(4) [As a minimum] The driver on each BLS or ALS ambulance run shall:

- (a) Be at least eighteen (18) years of age, with current motor vehicle operator's license;
- (b) Have at least two (2) years of licensed driver/operator experience;

(c) Complete a defensive driving training program that is developed by the ambulance provider or in conjunction with another agency or organization. The defensive driving training program shall be repeated for each driver at least every four (4) years.

1. [As a minimum] The training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

2. Documentation shall be available to support training in at least the following areas:

a. Review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

c. Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

(5) One (1) ambulance attendant on each prehospital emergency or nonemergency BLS ground ambulance run shall be certified or licensed for one (1) of the following levels:

- (a) Emergency medical technician (EMT);
- (b) Paramedic;
- (c) Registered nurse (RN) licensed by the Kentucky Board of Nursing (KBN); or
- (d) Physician licensed by the Kentucky Board of Medical Licensure (KBML).

(6) The second ambulance attendant, who may also be the driver, [as a minimum] shall have certification or licensing for one (1) of the following levels:

- (a) EMT-first responder;

(b) EMT;

(c) Paramedic;

(d) RN licensed by the KBN; or

(e) Physician licensed by the KBML.

(7) Personnel who on occasion may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

(a) Serve as drivers only in a three (3) person crew; and

(b) Do not render any type of first aid or medical treatment; or

(c) Serve as attendants only.

(8) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports may be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

(9) A Class I ground ambulance service may provide nonemergency transportation to individuals for whom no medical care is required or indicated during transport and for whom no emergency medical treatment is provided at the final destination. If a Class I provider [ground-ambulance service] chooses to make such runs, the ambulance run report form must be completed for each run to show that no medical care was required or indicated. For such runs, the ambulance shall be staffed by a minimum of one (1) person, who may also be the driver, licensed or certified for one (1) of the following levels:

(a) EMT-first responder;

(b) EMT;

(c) Paramedic; or

(d) Licensure as a registered nurse by the KBN or as a physician by the KBML.

Section 6. Equipment and Supplies. A Class I ground ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain, in full operational order, the following minimum equipment and supplies:

(1) Suction, ventilation, and blood pressure equipment.

(a) Fixed and portable suction apparatus including:

1. Rigid tonsillar catheters; and

2. Flexible catheters in the sizes six French (6F), 8F, 10F and 14F;

(b) Disposable bag-valve-mask ventilation units in 250 ml, and 1000 ml with oxygen reservoir with adult and infant size masks (capable of use with oxygen);

(c) Nasopharyngeal and oropharyngeal airways in newborn, infant, child, and adult sizes; and

(d) Adult, obese adult, infant, and child sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement.

(2) Oxygen equipment.

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier and attachment for use on the fixed oxygen tank;

(d) Adaptor and tubing;

(e) Transparent simple oxygen masks for adults, and children, and infants [-and infants];

(f) Transparent nonrebreather oxygen masks for adults and children[-and infants]; and

(g) Nasal cannulas for adults, children, and infants.

(3) Bandages and tape.

(a) [Minimum of] Two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) [Minimum of] Twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) [Minimum of] Ten (10) soft roller self-adhering bandages, various sizes;

- (d) ~~Minimum of~~ Four (4) rolls of adhesive tape, minimum of two (2) sizes;
- (e) ~~Minimum of~~ Ten (10) triangular bandages with large safety pins; and
- (f) ~~Minimum of~~ Two (2) sterile burn sheets.
- (4) Miscellaneous supplies.
 - (a) Eye protector pads and shields;
 - (b) ~~Minimum of~~ One (1) roll of aluminum foil, or an occlusive substitute approved by the licensing agency;
 - (c) Shears for bandages;
 - (d) Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the ambulance;
 - (e) ~~Minimum of~~ Two (2) penlights;
 - (f) ~~Minimum of~~ Two (2) sterile obstetrical kits;
 - (g) One (1) bottle of syrup of ipecac (with current expiration date) or one (1) bottle of activated charcoal (if in suspension, shall have current expiration date); ~~and~~
 - (h) Sterile irrigation fluids with current expiration date, if stocked on the ambulance, shall be obtained and maintained according to local, state, and federal statutes and regulations;

(i) Thermometer.

(5) Splints and immobilization devices.

- (a) Lower extremity traction splint, or equivalent as approved by the cabinet, for use in EMT training;
- (b) Splints for arm, leg, and foot (e.g., inflatable air splints, padded boards, ladder splints, or acceptable substitute approved by the cabinet);
- (c) Immobilization devices.
 - 1. Short spine board or other acceptable extrication device, as determined by the cabinet; and
 - 2. Long spine board with cervical immobilization accessories;
 - 3. An orthopedic "scoop" stretcher or other full-body immobilization device as determined by the cabinet.
- (d) Rigid, stiff cervical collars in large, medium, small adult, no-neck, and pediatric sizes;
- (e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.
- (6) Safety supplies and equipment.
 - (a) ~~Minimum of~~ Two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;
 - (b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;
 - (c) ~~Minimum of~~ One (1) pocket mask with an isolation valve per patient attendant;
 - (d) ~~Minimum of~~ One (1) clean scrub gown (or substitute, such as disposable coveralls), disposable mask, and gloves per patient attendant;
 - (e) ~~Minimum of~~ One (1) particulate filter face mask per attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;
 - (f) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towelettes;
 - (g) Hospital type disinfectants;
 - (h) Plastic bags for disposal of waste materials;
 - (i) Puncture resistant containers for disposal of sharp objects, if sharps are carried;
 - (j) ~~A minimum of~~ Two (2) clean blankets, sheets, and pillowcases;
 - (k) Tissues or similar substitute; and
 - (l) An emesis container or similar substitute.
- (7) Additional medical supplies and equipment desired for storage in the ambulance for authorized persons responding to the scene who are licensed or certified to provide medical skills that require training

beyond the authorized EMT level may be considered for approval by the cabinet. For eligibility, the ambulance provider shall include documentation to assure a system of accountability for the storage and handling of the additional medical supplies and equipment. The cabinet shall have the authority to deny approval of the arrangement if it is determined that the arrangement shall not be in the best interest of quality patient medical care or safety of the patient and personnel.

Section 7. Extrication and Other Rescue Equipment. (1) ~~For response to trauma scenes;~~ A Class I ~~ground ambulance~~ provider shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance:

- (a) ~~Minimum of~~ Two (2) pairs of eye protection goggles;
 - (b) ~~Minimum of~~ Two (2) pairs of heavy work gloves;
 - (c) ~~Minimum of~~ Two (2) hard hats;
 - (d) ~~Minimum of~~ One (1) spring loaded window punch or acceptable substitute; and
 - (e) ~~Minimum of~~ Six (6) reflective triangles, at least ten (10) inches in height, flares, or equivalent warning devices.
- (2)(a) For response to trauma scenes, a ground ambulance provider shall, ~~as a minimum,~~ provide one (1) vehicle, which need not be an ambulance, equipped with the following fully operational, more extensive access and extrication equipment:
- 1. ~~Minimum of~~ Two (2) fifty (50) foot long seven-sixteenths (7/16) or one-half (1/2) inch static or dynamic nylon ropes;
 - 2. ~~Minimum of~~ One (1) pair of pliers, vise grip;
 - 3. ~~Minimum of~~ One (1) wrench, with adjustable, stable open end;
 - 4. ~~Minimum of~~ One (1) set of screw drivers, four (4) sizes, regular blade;
 - 5. ~~Minimum of~~ One (1) set of screw drivers, four (4) sizes, Phillips type;
 - 6. ~~Minimum of~~ One (1) double action tin snip;
 - 7. ~~Minimum of~~ One (1) crow bar with pinch point;
 - 8. ~~Minimum of~~ One (1) hacksaw with twelve (12) blades; and
 - 9. ~~Minimum of~~ One (1) hammer, three (3) pound size;
 - 10. ~~Minimum of~~ One (1) fire axe;
 - 11. ~~Minimum of~~ One (1) wrecking bar;
 - 12. ~~Minimum of~~ One (1) bolt cutter, with ~~a minimum of~~ one and one-fourth (1 1/4) inch jaw opening;
 - 13. ~~Minimum of~~ One (1) four (4) ton porta-power jack and spreader tool;
 - 14. ~~Minimum of~~ One (1) shovel, short handle, with pointed blade;
 - 15. ~~Minimum of~~ One (1) shovel, long handle, with pointed blade;
 - 16. ~~Minimum of~~ One (1) come-along tool; and
 - 17. ~~Minimum of~~ Two (2) fire proof blankets.
- (b) A Class I ~~ground ambulance~~ provider which has a written agreement for this provision with a rescue squad, fire department, or an emergency service agency that meets the requirement established by the cabinet, shall not be required to provide the more extensive access and extrication equipment on the ambulance.

Section 8. ~~Ambulance Provider~~ Medical Directors. (1) An ALS Class I ~~ambulance~~ provider shall have a written agreement with a physician medical director.

(2) An ALS Class I ~~ambulance~~ provider shall provide evidence that the medical director shall:

- (a) Be a physician licensed by the KBML;
- (b) Meet the qualifications specified in 201 KAR 9:171, Section 2(6). Evidence shall be on file to verify that the qualifications of the medical director have been reviewed by the KBML to assure compliance with 201 KAR 9:171, Section 2(6);
- (c) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or be a physician who holds, or is in the process of completing, certification in advanced cardiac life support, and certification in advanced trauma life support or basic trauma life support, or have on

file written approval from the KBML;

(d) Assume responsibilities in accordance with 201 KAR 9:171, Sections 2(1) through (5); and

(e) Assume other responsibilities as agreed upon between the medical director and the director of the ambulance service.

Section 9. Class I ALS [~~Ground Ambulance~~] Providers. (1) A Class I [~~ALS~~] ALS provider shall meet the requirements of Sections 1 through 8 of this administrative regulation. It shall also meet the following additional requirements:

(a) Evidence shall be on file to verify that the ALS written medical protocols have been reviewed by the KBML.

(b) ALS services shall be provided on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through a call system or by a written mutual aid agreement with another Kentucky licensed Class I ALS provider.

(c) In order to foster development of full-time ALS coverage in counties where ALS services have not been previously available, the licensing agency may grant a waiver of the twenty-four (24) hour, seven (7) day a week requirement to a new ALS provider.

(d) A waiver of this requirement shall not exceed a period of twelve (12) months. If requested by the ALS provider, and approved by the licensing agency, additional waivers may be granted for just cause, such as inability to obtain certified paramedics.

(2) In addition to the BLS equipment required in Section 6 of this administrative regulation, at the point of patient contact and transportation, a Class I [~~ALS~~] ALS provider shall carry on each vehicle, and maintain in full operational order, the supplies and equipment as provided for in protocols established in subsection 1(a) of this section and shall include the following:

(a) An endotracheal intubation set consisting of :

1. Laryngoscope handle in adult and pediatric sizes;

2. Straight laryngoscope blades in sizes 0, 1, and 2;

3. Curved laryngoscope blades in sizes 3 and 4;

4. Extra batteries and bulbs for blades and handles; and

5. Endotracheal tubes for oral and nasal placement in adult and pediatric sizes (uncuffed tube sizes 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5; and cuffed tube sizes 5.5, 6.0, 6.5, 7.0, 7.5, and 8.0);

(b) Stylettes in adult and pediatric sizes;

(c) Magill forceps in adult and pediatric sizes;

(d) One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;

(e) Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(f) Bite block;

(g) A portable monitor defibrillator that:

1. Is capable of displaying a visual display of cardiac electrical activity;

2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range which is suitable for pediatric and adult usage;

4. Has adult and pediatric external paddle electrodes capable of utilization for immediate monitoring of heart activity and delivery of countershock in both the adult and pediatric patient;

5. Is capable of being operated from internal rechargeable batteries;

6. Has synchronized countershock capability for cardioversion. This requirement applies only to equipment purchased after the effective date of this administrative regulation;

7. Has a patient monitoring cable which has the following accessories:

a. Electrode paste or gel or equivalent;

b. Electrode pads or equivalent for use with the patient monitoring cable; and

c. One (1) additional roll of paper for hard copy printout.

(h) Needles, sterile, disposable: minimum of three (3) sizes shall

be maintained in eighteen (18) to twenty-five (25) gauge;

(i) Syringes, disposable: minimum three (3) sizes shall be maintained in 1cc to 30cc sizes;

(j) Appropriate containers for the collection of blood samples;

(k) Tourniquet appropriate for use with venipuncture procedure;

(l) Dextrostix (r) or equivalent for the measure of blood glucose levels;

(m) Disposable, individually packaged antiseptic wipes;

(n) Intravenous fluids, macrodrip and microdrip fluid sets, extension sets and accessory items;

(o) Intravenous catheter over needle devices in twelve (12) to (24) gauge;

(p) Butterfly needles in nineteen (19) and twenty-three (23) gauge;

(q) Intraosseous needles;

(r) Pediatric drug dosage tape or equivalent which shall provide easy reference for pediatric and infant treatment and drug dosages;

(s) Nasogastric tubes in size 5F, 8F pediatric sizes, sizes 10 to 18 French adult, and sizes 50 or 60 cc catheter tipped syringes or equivalent;

(t) Water soluble lubricant; and

(u) Infant or neonate suction apparatus.

(3) A Class I [~~ALS~~] ALS provider shall stock and maintain drugs and medications as required by:

(a) Protocols established in accordance with Section 8 of this administrative regulation; and

(b) Local, state, and federal statutes and regulations;

(4) Controlled drugs shall be stored in a locked compartment or equivalent approved by the cabinet. An ambulance provider which stores and utilizes controlled substances shall have protocols approved by the cabinet's drug control branch.

(5) With the exception of the supplies or equipment listed in subsection (2)(p), (q), (r), and (u) of this section, and supplies and equipment listed in subsection (2), (3), and (4) of this section which require specific sizes to accommodate adult, pediatric, and infant patients, nothing in this administrative regulation shall be construed to require a Class I [~~ALS~~] ALS provider to maintain the equipment required in subsections (2), (3) and (4) of this section if the equipment is not required by the medical protocols of the ALS Class I ground ambulance provider.

Section 10. Advanced Life Support Personnel. (1) Each licensed Class I ALS ambulance shall be staffed according to the requirements of 201 KAR 9:171, Section 5.

(2) If medical first [~~tiered~~] response emergency medical service vehicles are utilized by the Class I ALS provider, the vehicles shall:

(a) Be staffed by a minimum of one (1) person who has minimum training and current certification as a paramedic.

(b) Have available the minimum equipment and supplies required by Sections 6, 7, and 9 of this administrative regulation. This may be accomplished through the coordinated response of an ambulance from a separate ambulance provider under the provisions of a written mutual aid agreement on file with both providers.

Section 11. Class I Specialized [~~BLS and ALS~~] Providers. (1) A Class I [~~BLS or ALS ground ambulance~~] provider which does not provide prehospital emergency care to the general public, such as industrial based providers, neonatal transfers, and interfacility transfers requiring BLS or ALS shall be licensed as a Class I specialized [~~ground ambulance~~] provider.

(2) A BLS Class I specialized [~~ground ambulance~~] provider which complies with Sections 1 through 7, and 8 if applicable, of this administrative regulation, if applicable, and an ALS Class I specialized [~~ground ambulance~~] provider which complies with Sections 8 and 9 of this administrative regulation, may, with prior approval by the licensing agency, be allowed certain variances.

(3) A specialized license shall specify the limitations of the

provider which have been approved by the cabinet;

(4) In reference to Section 4(1) of this administrative regulation, a Class I specialized [~~ground-ambulance~~] provider shall not be required to provide emergency care and ambulance transportation on a twenty-four (24) hour, seven (7) days a week basis.

(5) In reference to Section 4(16) [(14)](a) of this administrative regulation, a Class I specialized [~~ground-ambulance~~] provider shall not be required to have an affiliation agreement with a local or regional dispatch center or 911 service.

(6) A BLS Class I specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6 and 7 of this administrative regulation, with certain variations as approved by the cabinet.

(7) An ALS Class I specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6, 7, and 9 of this administrative regulation, with certain variations as approved by the cabinet.

(8) A Class I specialized [~~emergency-care~~] provider desiring variations in equipment, supplies, or personnel shall submit the requests in writing for consideration and approval by the cabinet.

Section 12. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health [Services], 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.

(1) Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report," (2/91).

(2) "Federal Specifications for Ambulances", KKK-A-1822 D (11/94), General Services Administration, Federal Supply Service, Washington, D.C. 20406.

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: July 8, 1996

FILED WITH LRC: July 12, 1996 at 4 p.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Services
(As Amended)

905 KAR 1:360. Private child care levels of care.

RELATES TO: KRS 199.640-199.670, 605.090, 610.110

STATUTORY AUTHORITY: KRS 194.050, 199.641, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.641 authorizes the cabinet to establish the rate of reimbursement for child-caring facilities which is consistent with the level of service provided. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children. This administrative regulation establishes a four (4) level reimbursement system based on the needs of the child with a reimbursement rate for each level. The function of this administrative regulation shall be to establish procedures whereby each child shall be evaluated to assure classification in the appropriate level of care.

Section 1. Definitions. (1) "Commissioner" means the Commissioner or designee of the Department for Social Services.

(2) "Department" means the Department for Social Services as defined in KRS 199.641.

(3) "Gatekeeper" means the department or agent responsible for making a clinical determination of the level of care necessary to meet a child's treatment and service needs.

(4) "Referral packet" means the required forms to be submitted to the gatekeeper and private child care providers to determine level

of care and placement and contains the following forms:

(a) DSS-886, Private Child Care Client Inter-Agency Referral;

(b) DSS-886A, Application for Referral to Private Child Care;

(c) Achenbach Child Behavior Checklist; and, if a child has been assessed for youth services[;

~~(d) DSS-881, Social History Needs Assessment].~~

(5) "Utilization review" means during a child's placement each child's case records and existing documentation shall be examined to identify the child's current level of functioning and assign the appropriate level of care.

Section 2. Levels of Care. The department shall establish a four (4) level reimbursement system based on the needs of a child in care.

(1) Level I children require a routine home environment which provides maintenance, guidance and supervision to meet the needs of the child and ensures the emotional and physical well-being of the child. The rate for Level I shall be forty-five (45) dollars per day.

(2) Level II children may engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships and require supervision in a structured supportive setting with counseling available from professional or paraprofessional staff, educational support, and services designed to improve developmental or normalized social skills. The rate for Level II shall be sixty-five (65) dollars per day.

(3) Level III children have both physical and emotional needs and may be at moderate risk for causing harm to themselves and others and require a structured supportive setting with therapeutic counseling available by professional staff and physical, environmental, and treatment programs designed to improve social, emotional, and educational adaptation behavior. The rate for Level III shall be \$135 per day.

(4) Level IV children require a highly structured program with twenty-four (24) hour supervision and a specialized setting which can safely and effectively care for severe and chronic medical conditions complicated by behavioral disorders or emotional disturbance. The rate for Level IV shall be \$180 per day.

Section 3. Role of the Gatekeeper. The gatekeeper shall be responsible for:

(1) Assessing each child-caring facility to determine what levels of care are provided;

(2) Evaluating each child referred by the department or currently in a child-caring facility to determine classification in the appropriate level of care;

(3) Reevaluating each child within six (6) months after placement in a facility, and every three (3) months thereafter, at which time the child may be reassigned to another level of care or recommended for placement outside the level of care system:

(a) If a child is reassigned to a lower level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the lower level shall be effective thirty (30) days from the date of the reassigned level. If the child is placed in another child-caring facility, the rate for the lower level shall be effective on the day the child is placed.

(b) If a child is reassigned to a higher level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the higher level shall be effective the day after the reassigned level is made. If the child is placed in another child-caring facility, the rate shall be effective on the day the child is placed.

(c) If, after the first six (6) months and before the next scheduled utilization review, the child-caring facility determines a child may be transitioned to a lower level of care, the rate for the current assigned level shall remain in effect until the next scheduled utilization review. If the lower level of care is therapeutic foster care, independent living, or other alternative placement, the facility shall notify the department.

(d) If the child-caring facility determines a child is beyond the facility's capacity to provide care, or there is new information

previously not considered by the gatekeeper, a request for a redetermination may be made to the gatekeeper prior to the next utilization review;

1. After a redetermination is completed by the gatekeeper, the facility and department shall be notified of the results.

2. If the child-caring facility disagrees with a redetermination made by the gatekeeper, a request for dispute resolution shall be submitted in writing to the department as governed by Section 6 of this administrative regulation.

(4) Monitoring each placement for quality assurance as part of the reevaluation for each child within six (6) months of the placement and every three (3) months thereafter. The gatekeeper shall:

(a) Review the extent to which services provided are in compliance with the child's treatment plan;

(b) Determine if changes in the child's needs are reflected in the child's treatment plan; and

(c) Advise the Division of Licensing and Regulation of discrepancies; and

(5) Maintaining an information system for children served which shall include, but not be limited to:

- (a) Placement history;
- (b) Facility placement;
- (c) Cost of services;
- (d) Length of treatment; and
- (e) Discharge outcomes.

Section 4. Provider Requirements. (1) Providers in the levels of care reimbursement plan shall be licensed under 905 KAR 1:300. Providers shall comply with 905 KAR 1:300, Section 8, Youth treatment center, if providing intensive treatment oriented services.

(2) The provider shall demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for that child and shall include:

(a) Room and board including any activity contributing to housing, food, clothing, school supplies, or personal incidentals;

(b) Clinical services include the evaluation and treatment of emotional disorders, mental illness and substance abuse and are directed to the identification and alleviation of disability or distress, related thereto, experienced by a child which follows specific treatment plans targeted to identified problems; and

(c) Support services which include:

1. The identification of resources needed by a child and the coordination of services provided by a range of agencies or professionals;

2. Services which allow a child to cope with the disability or distress [maintain a positive level of functioning];

3. Services which provide access to improving the educational or vocational status of the child; and

4. Services which provide essential elements of daily living.

Section 5. Referral Process. (1) When the family service worker determines a need to place a child with a child-caring facility, a referral packet shall be completed and a copy submitted to the gatekeeper.

(2) The gatekeeper shall determine the appropriate level of care needed, using a needs assessment consistent with one (1) of the four (4) levels, and return the completed DSS-886 Private Child Care Client Inter-Agency Referral Form, to the family service worker within three (3) working days of receipt of the referral packet.

(3) Upon notification of the assigned level of care, the family service worker shall forward the referral packet to potential child-caring facilities.

(4) Once a child-caring facility accepts a child for placement, the family service worker shall complete the DSS-114, Schedule of Payment, herein incorporated by reference, and on the pre-arranged date of placement, transport the child to the facility.

(5) On a monthly basis, the child-caring facility shall submit to the gatekeeper and family service worker a copy of the child's record or a narrative summary including:

- (a) Information regarding the child's adjustment;
- (b) Services provided to both the child and family;
- (c) Progress made toward returning the child home; and
- (d) Future plans for the child.

Section 6. Dispute Resolution. A child-caring facility may request a dispute resolution to a determination made by the gatekeeper in the application of the provisions of this administrative regulation.

(1) A written notice of dispute shall be submitted to the commissioner no later than thirty (30) days after a child-caring facility is notified of a level of care determination. The notice of dispute shall:

- (a) Specify the action being disputed;
- (b) Specify the reasons the child-caring facility believes the level of care determination is unwarranted;
- (c) Include documentation the child-caring facility considers relevant to support the dispute; and
- (d) Specify alternative determinations or actions that may be taken.

(2) The commissioner shall cause the dispute to be reviewed and evaluated and shall:

(a) Notify the facility of the date, time and place for the informal conference within thirty (30) days of the receipt of the notice of dispute. The informal conference with the child-caring facility shall be conducted according to the following procedures:

1. The commissioner shall preside over the informal conference with the child-caring facility.

2. The proceedings shall be recorded.

3. The child-caring facility or an [his] authorized representative may present oral arguments or documentation which are considered relevant to support the facility's contention regarding the assigned level of care.

4. The department staff and the gatekeeper shall explain the department's decision regarding the assigned level of care.

5. The commissioner may question the participants and may permit questions or discussions among participants if that may contribute to reaching a decision regarding the assigned level of care under dispute.

(b) Issue a written decision on the dispute, including findings of fact and conclusions of law, no later than thirty (30) days after the informal conference.

Section 7. Administrative Hearing Process. If the child-caring facility disagrees with the commissioner's decision on the dispute, the facility has the right to an administrative hearing held in accordance with KRS Chapter 13B. The notice of hearing shall comply with KRS 13B.050.

Section 8. Material Incorporated by Reference. (1) The following forms are herein incorporated by reference.

(a) DSS-114, Schedule of Payment, revised July, 1996;

(b) DSS-886, Private Child Care Client Inter-Agency Referral Form, revised March 1996;

(c) DSS-886A, Application for Referral to Private Child Care, revised September 1996 [July, 1993]; and

(d) [DSS-881, Social History/Needs Assessment, revised January, 1993; and

(e)] Achenbach Child Behavior Checklist (CBCL), revised January, 1995.

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

VIOLA MILLER, Acting Commissioner

ADMINISTRATIVE REGISTER - 1954

VIOLA MILLER, Secretary

APPROVED BY AGENCY: August 6, 1996

FILED WITH LRC: August 13, 1996 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

FINANCE AND ADMINISTRATION CABINET
Department for Administration
(Amended After Hearing)

200 KAR 5:025. Memoranda of agreement and memoranda of understanding by state agencies.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.035, 45A.045(2), 45A.050(5)

NECESSITY, FUNCTION, AND CONFORMITY: The Finance and Administration Cabinet needs to supervise state agencies acting under its delegated authority from MOAs and MOUs. The benefits expected from this administrative regulation are two (2)-fold: to allow the Finance and Administration Cabinet to monitor their delegation of authority to an agency and to enable the Finance and Administration Cabinet to monitor an agency's use of MOAs and MOUs. This administrative regulation will be implemented by requiring a state agency to report annually on all MOAs and MOUs used by that agency and to follow guidelines for use of MOAs and MOUs.

Section 1. Memorandum of agreement (MOA) shall be defined as an agreement for services rendered to a state agency as defined in KRS 45A.690(1)(d)1-6 [3], and shall include program administration contracts, but shall not apply to purchases of commodities and supplies.

Section 2. By January 1, 1997, all state agencies with active MOAs shall provide the Finance and Administration Cabinet, Department for Administration with a report on each MOA. The report shall be submitted annually thereafter to the department by September 1 of each year, beginning September, 1997, and shall set out the following information: the name of the party with whom the agency entered the MOA; the type of service to be rendered under the MOA; the cost of the MOA to the agency to date; the projected total cost of the MOA to the agency; and the date the last payment was made under the MOA. The report shall contain information as of January 1 of 1997 and as of September 1 of each year thereafter [the first working day of each month and shall be submitted to the department by the fifth working day of each month]. The report shall be in an electronic format approved by the department prior to its use by the agency.

Section 3. Memorandum of understanding (MOU) shall be defined as a contract or agreement used whenever there is a joint project or undertaking by any state agency and another entity or entities, either government or private. The terms of a MOU shall set out the rights, duties and responsibilities of each entity in relation to the project or undertaking and the other entities. The term "joint entity or undertaking" shall include capital construction projects. The MOU shall specify the monetary liability of each entity and shall provide for the return of a specific dollar amount of state funds in the event that the project or undertaking is not begun, or other specific prerequisites are not completed by dates certain.

Section 4. By January 1, 1997, all state agencies with active MOUs shall provide the Secretary of the Finance and Administration Cabinet with a report of each active MOU. The report shall be submitted annually thereafter to the secretary by September 1 of each year, beginning September, 1997, and shall set out the following information: the name of the party or parties with whom the agency entered the MOU; the type of service to be rendered under the MOU;

the duties and responsibilities of each party under the MOU; any "flag" dates listed in the MOU by which certain action is to be completed and whether these dates have been met; the cost of the MOU to the agency to date; the projected total cost of the MOU to the agency; and the date the last payment was made under the MOU. The report shall contain information as of January 1 and September 1 of 1997 and as of September 1 of each year thereafter [the first working day of each month and shall be submitted to the secretary by the fifth working day of each month]. The report shall be in an electronic format approved by the department prior to its use by the agency.

Section 5. This administrative regulation shall not discharge an agency's responsibility to obtain all other necessary statutory and regulatory approvals applicable to the MOA or MOU.

Section 6. This administrative regulation shall not apply to memoranda of agreement or memoranda of understanding entered into by the Kentucky Transportation Cabinet pursuant to KRS Chapters 176 and 177.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: September 25, 1996

FILED WITH LRC: September 27, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Karen A. Powell

(1) Type and number of entities affected: This administrative regulation affects state agencies using MOAs and MOUs delegated by the Finance and Administration Cabinet.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is no anticipated cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation poses no anticipated cost on business in the geographical area in which it will be implemented.

(c) Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The agencies utilizing MOAs and MOUs will need to comply annually with written reports to the Secretary of Finance and Administration updating the status of those memoranda for their duration. The reports will provide the information specified in the administrative regulation. The costs for this compliance should be a minimal investment of time.

2. Second and subsequent years: In following years, the compliance costs of this regulation should remain stable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The primary savings from this regulation will be resources preserved due to keener oversight of state government agencies utilizing MOAs and MOUs.

2. Continuing costs or savings: Prolonged agency accountability to the Finance Cabinet could continue to save state funds into the future.

3. Additional factors increasing or decreasing costs: No other factors are known at this time.

(b) Reporting and paperwork requirements: The Finance and Administration Cabinet will need to evaluate the agency reports to monitor the delegation of authority under MOAs and MOUs.

(4) Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budgets of the affected agencies will supply the revenue to implement and enforce this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No impact is expected.

(b) Kentucky: No impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: At the Notice of Intent hearing, a representative of the Transportation Cabinet suggested that the Transportation Cabinet should only make the required reports to the Finance and Administration Cabinet when an MOA is executed and terminated, rather than an annual report of all active MOAs. The regulation's intent, however, is to allow the Finance and Administration Cabinet to exercise appropriate oversight of active MOAs throughout their existence, not just at execution and termination. In order to fulfill this intent, agencies must make the required reports annually. The alternative was rejected.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No impact would result.

(c) If detrimental effect would result, explain detrimental effect: Inapplicable

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Division of Purchases and the Division of Contracting and Administration, no statutes, administrative regulations, or government policies conflict, overlap, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Inapplicable

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Inapplicable

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Section 6 of this regulation exempts the Kentucky Transportation Cabinet from the MOA and MOU requirement because the Transportation Cabinet has independent authority to enter into certain MOAs and MOUs pursuant to KRS Chapters 176 and 177.

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

401 KAR 31:005. Definitions related to 401 KAR Chapter 31.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10, 261.1, 401 KAR Chapter 31

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: This chapter implements provisions of KRS 224.46-510 and establishes the general provisions applicable to generators of hazardous waste. This administrative regulation defines essential terms that are used in this chapter. The majority of terms defined in this administrative

regulation are equivalent to federal terms contained in 40 CFR Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 31 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste

resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "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.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the

combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "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.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "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.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; ~~or [and]~~

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" 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, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "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.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action require-

ments under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure ~~[and postclosure]~~ cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

~~(58) ["Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).]~~

~~(59)~~ "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

~~(59)~~ ~~(60)~~ "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

~~(60)~~ ~~(61)~~ "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

~~(61)~~ ~~(62)~~ "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266; and

~~(d)~~ That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(62) [(63)] "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63) [(64)] "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(64) [(65)] "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65) [(66)] "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 (for example, transport vehicle) and a boiler or industrial furnace.

(66) "Disposal" shall have the meaning specified in KRS 224.01-010.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) ["Disposal" shall have the meaning specified in KRS 224.01-010.

(69)] "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.

(69) [(70)] "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.

(70) [(71)] "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(71) [(72)] "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.

(72) [(73)] "Draft permit" shall have the same meaning as "proposed permit".

(73) [(74)] "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(74) [(75)] "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(75) [(76)] "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(76) [(77)] "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(77) [(78)] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(78) [(79)] "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(79) [(80)] "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) [(81)] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) [(82)] "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(82) [(83)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(83) [(84)] "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 **401 KAR 34:275. [this administrative regulation.]**

(84) [(85)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85) [(86)] "Existing" 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.

(86) [(87)] "Existing component" shall have the same meaning as "existing tank system."

(87) [(88)] "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) [(89)] "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(89) [(90)] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(90) [(91)] "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation 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 site or installation of the tank system to be completed within a reasonable time.

(91) [(92)] "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(92) [(93)] "Face amount" means the total amount the insurer is obligated to pay under the policy.

(93) [(94)] "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (**for example** [e.g.], one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(94) "Facility mailing list" means the mailing list for a facility maintained in accordance with Section 7(3)(a)4c of 401 KAR 38:050.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "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.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "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.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

~~(113) ["Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.]~~

~~(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.~~

(114) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

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

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01-010.

(117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

(118) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(119) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

~~[(119) "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.]~~

~~[(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit for use tank system.]~~

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impound-

ment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(122) "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.

(123) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(124) [(122)] "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

[(123)] "Hazardous waste" shall have the meaning specified in KRS 224.01-040.]

(125) [(124)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) [(125)] "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(127) [(126)] "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) [(127)] "In existence" shall have the same meaning as "existing."

(129) [(128)] "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) [(129)] "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) [(130)] "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.

(132) [(131)] "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) [(132)] "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) [(133)] "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient

pressure.

(135) [(134)] "In vapor service" shall have the same meaning as "in gas service".

(136) [(135)] "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) [(136)] "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(138) [(137)] "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) [(138)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) [(139)] "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) [(140)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(142) [(141)] "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulp liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(143) [(142)] "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(144) [(143)] "Injection well" means a well into which fluids are

injected to achieve subsurface emplacement.

(145) [(144)] "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(146) [(145)] "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(147) [(146)] "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(148) [(147)] "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(149) [(148)] "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(150) [(149)] "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

[(150)] "IUC well" means a ~~underground injection control well as provided in 40 CFR Part 144.~~

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) **"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.**

(158) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

[(158)] "Landfill" means a ~~disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.~~

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats,

calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "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.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "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.

(169) **"Manifest" shall have the meaning specified in KRS 224.01-010.**

(170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

[(170)] "Manifest" ~~shall have the meaning specified in KRS 224.01-010.~~

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is

stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

~~[(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.]~~

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(180) "New tank component" shall have the same meaning as "new tank system."

(181) [(180)] "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

~~[(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.]~~

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "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.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

~~[(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.]~~

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for ~~hazardous waste~~ waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in 401 KAR Chapter 31 ~~[40 CFR Part 264]~~.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

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

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "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.

(220) "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.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units

or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes 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 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "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.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) **"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.**

(252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

~~[(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.]~~

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which

solid wastes have been routinely and systematically released.

(256) "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.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "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.

(264) **"Storage" shall have the meaning specified in KRS 224.01-010.**

(265) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

~~(266) [(265)] "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.~~

~~[(266) "Storage" shall have the meaning specified in KRS 224.01-010.]~~

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "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.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

~~[(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").]~~

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs 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.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means :

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;

2. What pretreatment, if any, is required;

3. The optimal process conditions needed to achieve the desired treatment;

4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment" shall have the meaning specified in KRS 224.01-010.

(288) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(289) ~~[(289)]~~ "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

~~[(289) "Treatment" shall have the meaning specified in KRS 224.01-010.]~~

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 CFR Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(293) ~~[(292)]~~ "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(294) ~~[(293)]~~ "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) ~~[(294)]~~ "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) ~~[(295)]~~ "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

(a) Batteries as described in Section 2 of 401 KAR 43:010;

(b) Pesticides as described in Section 3 of 401 KAR 43:010;

(c) Thermostats as described in Section 4 of 401 KAR 43:010; and

(d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) ~~[(296)]~~ "Universal waste handler":

(a) Means:

1. A generator of universal waste; or

2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a

foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) [(297)] "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) [(298)] "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) [(299)] "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) [(300)] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302) [(301)] "Used oil" shall have the same meaning as KRS 224.50-545.

(303) [(302)] "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) [(303)] "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.

(305) [(304)] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) [(305)] "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) [(306)] "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.

(308) [(307)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) [(308)] "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) [(309)] "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" shall have the meaning specified in KRS 224.01-010.

(312) [(310)] "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) [(311)] "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314) [(312)] "Waste pile" shall have the same meaning as "pile".

(315) [(313)] "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010) [Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference refer to § 260.11 of this chapter)]. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

[(314) "Waste" shall have the meaning specified in KRS 224.01-010.]

(316) [(314)] "Wastewaters" means 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:

(a) 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 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

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

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

(317) [(315)] "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) [(317)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel

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without containers or labels.

~~[(318)] "Water" or "Waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.]~~

~~(320) [(319)]~~ "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

~~(321) [(320)]~~ "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

~~(322) [(321)]~~ "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

~~(323) [(322)]~~ "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

~~(324) [(323)]~~ "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| | |
|-----------------|---|
| Am. | Amended |
| C | Corrosive waste |
| CAA | Clean Air Act, as amended |
| CFR | Code of Federal Regulations |
| cm | Centimeter |
| cm ² | Centimeter squared |
| CO | Carbon monoxide |
| CO ₂ | Carbon dioxide |
| CWA | Clean Water Act, as amended |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| DOT | United States Department of Transportation |
| DRE | Destruction and removal efficiency |
| E | Explosive waste |
| eff. | Effective |
| EPA | United States Environmental Protection Agency |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FIA | Federal Insurance Administration |
| FR | Federal Register |
| H | Acutely hazardous waste |
| ha | Hectare |
| HTMR | High temperature metals recovery |
| HSWA | Hazardous and Solid Waste Amendments of 1994 |
| I | Ignitable waste |
| KAR | Kentucky Administrative Regulation |
| kg | Kilogram |
| KPDES | Kentucky Pollution Discharge Elimination System |
| KRS | Kentucky Revised Statute |
| Ky.R. | Administrative Register of Kentucky |
| l | Liter |
| LC | Lethal concentration |
| LD | Lethal dose |
| ml | Milliliter |
| mm | Millimeter |
| N | Normal |

| | |
|-------------|---|
| NESHAPS | National Emissions Standards for Hazardous Air Pollutants |
| NPDES | National Pollutant and Discharge Elimination System |
| PCB | Polychlorinated biphenyl |
| pCi/l | Picocuries per liter |
| PHC | Principal hazardous constituent |
| Permit POHC | Permitted principal organic hazardous constituent |
| PM | Particulate matter |
| POHC | Principal organic hazardous constituent |
| ppm | parts per million |
| Trial POHC | Trial burn principal organic hazardous constituent |
| POTW | Publicly owned treatment works |
| PSD | Prevention of significant deterioration |
| psi | Pounds per square inch |
| psig | Pounds per square inch gauge |
| R | Reactive waste |
| RCRA | Resource Conservation and Recovery Act, as amended |
| SDWA | Safe Drinking Water Act, as amended |
| SEC | Securities and Exchange Commission |
| SIC | Standard Industrial Classification Code |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |
| T | Toxic waste |
| UIC | Underground Injection Control |
| UICP | Underground Injection Control Program |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| USGS | United States Geological Survey |
| USPS | United States Postal Service |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives. These changes are consistent with KRS 13A.222 requirements.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 31. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 31, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

401 KAR 31:040. Lists of hazardous wastes.

RELATES TO: KRS 224.01, 224.40, 224.43, 224.46, 224.99, 40 CFR 261 Subpart D

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3), 224.46-530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This administrative regulation establishes the lists of hazardous wastes. **This administrative regulation is equivalent to federal standards established in 40 CFR 261 Subpart D except for the addition of Section 5 of this administrative regulation, which contains nerve and blister agents as required by KRS 224.50-130.**

Section 1. General Applicability and Delisting Procedures. (1) A waste is a hazardous waste if it is listed in any section of this administrative regulation unless it has been excluded from that list under 401 KAR 31:060 and 31:070.

(2) The cabinet shall indicate the basis for listing the classes or types of wastes listed in this administrative regulation by employing one (1) or more of the following Hazard Codes:

| Hazard Code | Class or Type of Waste |
|-------------|-------------------------------|
| (I) | Ignitable waste |
| (C) | Corrosive waste |
| (R) | Reactive waste |
| (E) | Toxicity characteristic waste |
| (H) | Acute hazardous waste |
| (T) | Toxic waste |

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401 KAR 31:160 identifies the constituent which caused the cabinet to list the waste as a toxicity characteristic waste (E) or toxic waste (T) in Sections 2 and 3 of this administrative regulation.

(3) Each hazardous waste listed in this administrative regulation is assigned an EPA Hazardous Waste Number, which precedes the name of the waste. This number shall be used in complying with the notification requirements of KRS 224.46-510 and the recordkeeping and reporting requirements under 401 KAR Chapters 32 to 40.

(4) The following hazardous wastes listed in Section 2 or 3 of this administrative regulation are subject to the exclusion limits for acutely hazardous wastes established in Section 5 of 401 KAR 31:010: EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

Section 2. Hazardous Wastes from Nonspecific Sources. (1) Hazardous wastes from nonspecific sources are:

| Industry and EPA Hazardous Waste No. | Hazardous Waste | Hazard Code | | |
|---|--|----------------|------|---|
| Generic: F001 | The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. | (T) | F005 | mixtures/blends containing, before use, one (1) or more of the above nonhalogenated solvents, and, a total of ten (10) percent or more (by volume) of one (1) or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. The following spent nonhalogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T) |
| F002 | The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. | (T) | F006 | The following spent nonhalogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents, or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (I,T) |
| | | | F007 | Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. (T) |
| | | | F008 | Spent cyanide plating bath solutions from electroplating operations. (R,T) |
| F003 | The following spent nonhalogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent | (I)[*] | F009 | Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process. (R,T) |
| | | | F010 | Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process. (R,T) |
| | | | | Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process. (R,T) |

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|------|---|-------|------|---|
| F011 | Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations. | (R,T) | | those having carbon chain lengths ranging from one (1) to and including five (5), with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in Sections 2 and 3 of this administrative regulation.) |
| F012 | Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process. | (T) | | |
| F019 | Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. | (T) | F025 | Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one (1) to and including five (5), with varying amounts and positions of chlorine substitution. |
| F020 | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.) | (H) | F026 | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions. |
| F021 | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol or of intermediates used to produce its derivatives. | (H) | F027 | Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.) |
| F022 | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions. | (H) | F028 | Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027. |
| F023 | Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.) | (H) | F032 | Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with Section 6 of this administrative regulation or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (For example, F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include |
| F024 | Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated <u>aliphatic</u> hydrocarbons are | (T) | | |

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| | | | |
|------|---|-----|---|
| F034 | <p>K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol.</p> <p>Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol.</p> | (T) | <p>in <u>dissolved air filtration (DAF)</u> units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in subsection (2) of this section (including sludges and floats generated in one (1) or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.</p> |
| F035 | <p>Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol.</p> | (T) | <p>F039 Leachate (liquids that have percolated through land disposal wastes) resulting from the disposal of more than one (1) restricted waste classified as hazardous under this administrative regulation. (Leachate resulting from the disposal of one (1) or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its EPA Hazardous Waste Number: F020, F021, F022, F026, F027, and F028.).</p> |
| F037 | <p>Petroleum refinery primary oil/water/solids separation sludge - Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in subsection (2)(b) of this section (including sludges generated in one (1) or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.</p> | (T) | <p>[*(1, T) shall be used to specify mixtures containing ignitable and toxic constituents.]</p> |
| F038 | <p>Petroleum refinery secondary (emulsified) oil/water/solids separation sludge - Any sludge and float generated from the physical and chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated</p> | (T) | <p>(2) Listing specific definitions.</p> <p>(a) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and water and solids.</p> <p>(b)1. For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one (1) of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity; and</p> <p>a. The unit employs a minimum of six (6) <u>horse power [hp]</u> per million gallons of treatment volume, and either:</p> <p>b. The hydraulic retention time of the unit is no longer than five (5) days; or</p> <p>c. The hydraulic retention time is no longer than thirty (30) days and the unit does not generate a sludge that is a hazardous waste by the toxicity characteristic.</p> <p>2. Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities shall maintain, in their operating or other on-site records, documents and data sufficient to prove that:</p> <p>a. The unit is an aggressive biological treatment unit as defined in this subsection; and</p> <p>b. The sludges sought to be exempted from the definitions of F037 or F038 were actually generated in the aggressive biological treatment unit.</p> <p>(c)1. For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.</p> <p>2. For the purposes of the F038 listing:</p> <p>a. Sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement; and</p> |

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b. Floats are considered to be generated at the moment they are formed in the top of the unit.

Section 3. Hazardous Wastes from Specific Sources. Hazardous wastes from specific sources are:

Industry and EPA

| Hazardous Waste No. | Hazardous Waste | Hazard Code |
|---------------------|-----------------|-------------|
|---------------------|-----------------|-------------|

Wood Preservation:

| | | |
|------|---|-----|
| K001 | Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote or pentachlorophenol. | (T) |
|------|---|-----|

Inorganic Pigments:

| | | |
|------|--|-----|
| K002 | Wastewater treatment sludge from the production of chrome yellow and orange pigments. | (T) |
| K003 | Wastewater treatment sludge from the production of molybdate orange pigments. | (T) |
| K004 | Wastewater treatment sludge from the production of zinc yellow pigments. | (T) |
| K005 | Wastewater treatment sludge from the production of chrome green pigments. | (T) |
| K006 | Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated). | (T) |
| K007 | Wastewater treatment sludge from the production of iron blue pigments. | (T) |
| K008 | Oven residue from the production of chrome oxide green pigments. | (T) |

Organic Chemicals:

| | | |
|------|---|-------|
| K009 | Distillation bottoms from the production of acetaldehyde from ethylene. | (T) |
| K010 | Distillation side cuts from the production of acetaldehyde from ethylene. | (T) |
| K011 | Bottom stream from the wastewater stripper in the production of acrylonitrile. | (R,T) |
| K013 | Bottom stream from the acetonitrile column in the production of acrylonitrile. | (R,T) |
| K014 | Bottoms from the acetonitrile purification column in the production of acrylonitrile. | (T) |
| K015 | Still bottoms from the distillation of benzyl chloride. | (T) |
| K016 | Heavy ends or distillation residues from the production of carbon tetrachloride. | (T) |
| K017 | Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin. | (T) |
| K018 | Heavy ends from the fractionation column in ethyl chloride production. | (T) |

| | | |
|------|--|--------|
| K019 | Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production. | (T) |
| K020 | Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production. | (T) |
| K021 | Aqueous spent antimony catalyst waste from fluoromethanes production. | (T) |
| K022 | Distillation bottom tars from the production of phenol/acetone from cumene. | (T) |
| K023 | Distillation light ends from the production of phthalic anhydride from naphthalene. | (T) |
| K024 | Distillation bottoms from the production of phthalic anhydride from naphthalene. | (T) |
| K025 | Distillation bottoms from the production of nitrobenzene by the nitration of benzene. | (T) |
| K026 | Stripping still tails from the production of methylethyl pyridines. | (T) |
| K027 | Centrifuge and distillation residues from toluene diisocyanate production. | (R, T) |
| K028 | Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane. | (T) |
| K029 | Waste from the product steam stripper in the production of 1,1,1-trichloroethane. | (T) |
| K030 | Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene. | (T) |
| K083 | Distillation bottoms from aniline production. | (T) |
| K085 | Distillation or fractionation column bottoms from the production of chlorobenzenes. | (T) |
| K093 | Distillation light ends from the production of phthalic anhydride from orthoxylene. | (T) |
| K094 | Distillation bottoms from the production of phthalic anhydride from ortho-xylene. | (T) |
| K095 | Distillation bottoms from the production of 1,1,1-trichloroethane. | (T) |
| K096 | Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane. | (T) |
| K103 | Process residues from aniline extraction from the production of aniline. | (T) |
| K104 | Combined wastewater streams generated from nitrobenzene/aniline production. | (T) |
| K105 | Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes. | (T) |
| K107 | Column bottoms from product separation from the production of 1,1-dimethyl-hydrazine (UDMH) from carboxylic acid hydrazines. | (C, T) |
| K108 | Condensed column overheads from product separation and condensed reactor vent gases from the | (I, T) |

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| | | | | | |
|------|---|-------|------|--|-------|
| | production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. | | | <u>excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.</u> | |
| K109 | Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. | (T) | | | |
| K110 | Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. | (T) | K156 | Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. | (T) |
| K111 | Product wash waters from the production of dinitrotoluene via nitration of toluene. | (C,T) | K157 | Wastewaters (including scrubber waters, condenser waters, washwater, and separation waters) from the production of carbamates and carbamoyl oximes. | (T) |
| K112 | Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene. | (T) | K158 | Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. | (T) |
| K113 | Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. | (T) | K159 | Organics from the treatment of thiocarbamate wastes. | (T) |
| K114 | Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. | (T) | K160 | Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes. | (T) |
| K115 | Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene. | (T) | K161 | Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. | (R,T) |
| K116 | Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine. | (T) | | Inorganic Chemicals: | |
| K117 | Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene. | (T) | K071 | Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used. | (T) |
| K118 | Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. | (T) | K073 | Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production. | (T) |
| K136 | Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene. | (T) | K106 | Wastewater treatment sludge from the mercury cell process in chlorine production. | (T) |
| K149 | <u>Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups, (This waste does not include still bottoms from the distillation of benzyl chloride).</u> | (T) | | Pesticides: | |
| K150 | <u>Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixture of these functional groups.</u> | (T) | K031 | By-product salts generated in the production of MSMA and cacodylic acid. | (T) |
| K151 | <u>Wastewater treatment sludges,</u> | (T) | K032 | Wastewater treatment sludge from the production of chlordane. | (T) |
| | | | K033 | Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane. | (T) |
| | | | K034 | Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane. | (T) |
| | | | K035 | Wastewater treatment sludges generated in the production of creosote. | (T) |
| | | | K036 | Still bottoms from toluene reclamation distillation in the production of disulfoton. | (T) |
| | | | K037 | Wastewater treatment sludges from | (T) |

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| K038 | the production of disulfoton. Wastewater from the washing and stripping of phorate production. | (T) | K051 | sludge from the petroleum refining industry. | (T) |
| K039 | Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate. | (T) | K052 | API separator sludge from the petroleum refining industry. | (T) |
| K040 | Wastewater treatment sludge from the production of phorate. | (T) | | Tank bottoms (lead) from the petroleum refining industry. | (T) |
| K041 | Wastewater treatment sludge from the production of toxaphene. | (T) | Iron and Steel: | | |
| K042 | Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T. | (T) | K061 | Emission control dust/sludge from the primary production of steel in electric furnaces. | (T) |
| K043 | 2,6-Dichlorophenol waste from production of 2,4-Dichlorophenol. | (T) | K062 | Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332). | (C,T) |
| K097 | Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane. | (T) | | | |
| K098 | Untreated process wastewater from the production of toxaphene. | (T) | Primary Copper: | | |
| K099 | Untreated wastewater from the production of 2,4-D. | (T) | K064 | Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production. | (T) |
| K123 | Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenedisithiocarbamic acid and its salts. | (T) | Primary Lead: | | |
| K124 | Reactor vent scrubber water from the production of ethylenedisithiocarbamic acid and its salts. | (C,T) | K065 | Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities. | (T) |
| K125 | Filtration, evaporation, and centrifugation solids from the production of ethylenedisithiocarbamic acid and its salts. | (T) | Primary Zinc: | | |
| K126 | Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenedisithiocarbamic acid and its salts. | (T) | K066 | Sludge from treatment of process wastewater and acid plant blowdown from primary zinc production. | (T) |
| K131 | Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide. | (C,T) | Primary Aluminum: | | |
| K132 | Spent absorbent and wastewater separator solids from the production of methyl bromide. | (T) | K088 | Spent potliners from primary aluminum reduction. | (T) |
| | | | Ferroalloys: | | |
| Explosives: | | | K090 | Emission control dust or sludge from ferrochromiumsilicon production. | (T) |
| K044 | Wastewater treatment sludges from the manufacturing and processing of explosives. | (R) | K091 | Emission control dust or sludge from ferrochromium production. | (T) |
| K045 | Spent carbon from the treatment of wastewater containing explosives. | (R) | The listing of wastes K064, K065, K066, K088, K090 and K091 as hazardous wastes shall become applicable to persons who generate or manage such wastes <u>after May 22, 1990.</u> [six (6) months after the effective date of this administrative regulation.] | | |
| K046 | Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds. | (T) | Secondary Lead: | | |
| K047 | Pink/red water from TNT operations. | (T) | K069 | Emission control dust/sludge from secondary lead smelting. | (T) |
| | | | K100 | Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting. | (T) |
| Petroleum Refining: | | | Veterinary Pharmaceuticals: | | |
| K048 | Dissolved air flotation (DAF) float from the petroleum refining industry. | (T) | K084 | Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds. | (T) |
| K049 | Slop oil emulsion solids from the petroleum refining industry. | (T) | K101 | Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from | (T) |
| K050 | Heat exchanger bundle cleaning | (T) | | | |

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| | arsenic or organoarsenic compounds. | |
| K102 | Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds. | (T) |
| Ink Formulation: | | |
| K086 | Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead. | (T) |
| Coking: | | |
| K060 | Ammonia still lime sludge from coking operations. | (T) |
| K087 | Decanter tank tar sludge from coking operations. | (T) |
| <u>K141</u> | <u>Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke byproducts produced from coal. The listing does not include K087 (decanter tank tar sludges from coking operations).</u> | <u>(T)</u> |
| <u>K142</u> | <u>Tar storage tank residues from the production of coke from coal or from the recovery of coke byproducts produced from coal.</u> | <u>(T)</u> |
| <u>K143</u> | <u>Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke byproducts produced from coal.</u> | <u>(T)</u> |
| <u>K144</u> | <u>Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke byproducts produced from coal.</u> | <u>(T)</u> |
| <u>K145</u> | <u>Residues from naphthalene collection and recovery operations from the recovery of coke byproducts produced from coal.</u> | <u>(T)</u> |
| <u>K147</u> | <u>Tar storage tank residues from coal tar refining.</u> | <u>(T)</u> |
| <u>K148</u> | <u>Residues from coal tar distillation, including but not limited to, still bottoms.</u> | <u>(T)</u> |
| K149 | Distillation bottoms from the production of alpha-(or-methyl)-chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride). | (T) |
| <u>K150</u> | <u>Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha-(or-methyl)-chlorinated toluenes, ring-chlori-</u> | <u>(T)</u> |

~~nated toluenes, benzoyl chlorides, and compounds with mixture of these functional groups.~~

~~K151 Wastewater treatment sludges, (T) excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha-(or-methyl)-chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.]~~

Section 4. Discarded Commercial Chemical Products, Off-specification Species, Container Residues, and Spill Residues Thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Section 2(1)(b)1 of 401 KAR 31:010; when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment; when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use; when in lieu of their original intended use; they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel:

(1) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section.

(2) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) or (6) of this section.

(3) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section, unless the container is empty as defined in Section 7(2) of 401 KAR 31:010.

(4) Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section, or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical **product and manufacturing chemical** intermediate which, if it met specification, would have the generic name listed in subsection (5) or (6) of this section.

(5) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or **manufacturing chemical intermediates** referred to in subsections (1) to (4) of this section, are identified as acute hazardous wastes (H) and are subject to the conditionally exempt small [limited] quantity generator exclusion in Section 5 of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is only listed for acute toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

| Hazardous Waste No. | Substance | Chemical Abstracts No. |
|---------------------|-----------------------------------|------------------------|
| P023 | Acetaldehyde, chloro- | 107-20-0 |
| P002 | Acetamide, N-(aminothioxomethyl)- | 591-08-2 |
| P057 | Acetamide, 2-fluoro- | 640-19-7 |
| P058 | Acetic acid, fluoro-, sodium salt | 62-74-8 |
| P002 | 1-Acetyl-2-thiourea | 591-08-2 |
| P003 | Acrolein | 107-02-8 |
| P070 | Aldicarb | 116-06-3 |

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| P203 | Aldicarb sulfone | 1646-88-4 | P024 | p-Chloroaniline | 106-47-8 |
| P004 | Aldrin | 309-00-2 | P026 | 1-(o-Chlorophenyl)thiourea | 5344-82-1 |
| P005 | Allyl alcohol | 107-18-6 | P027 | 3-Chloropropionitrile | 542-76-7 |
| P006 | Aluminum phosphide (R,T) | 20859-73-8 | P029 | Copper cyanide | 544-92-3 |
| P007 | 5-(Aminomethyl)-3-isoxazolol | 2763-96-4 | P029 | Copper cyanide Cu(CN) | 544-92-3 |
| P008 | 4-Aminopyridine | 504-24-5 | P202 | <u>m-Cumenyl methylcarbamate</u> | <u>64-00-6</u> |
| P009 | Ammonium picrate (R) | 131-74-8 | P030 | Cyanides (soluble cyanide salts), not otherwise specified | ----- |
| P119 | Ammonium vanadate | 7803-55-6 | P031 | Cyanogen | 460-19-5 |
| P099 | Argentate (1-), bis(cyano-C)-, potassium | 506-61-6 | P033 | Cyanogen chloride | 506-77-4 |
| P010 | Arsenic acid H ₃ AsO ₄ | 7778-39-4 | P033 | Cyanogen chloride (CN)Cl | 506-77-4 |
| P012 | Arsenic oxide As ₂ O ₃ | 1327-53-3 | P034 | 2-Cyclohexyl-4,6-dinitrophenol | 131-89-5 |
| P011 | Arsenic oxide As ₂ O ₅ | 1303-28-2 | P016 | Dichloromethyl ether | 542-88-1 |
| P011 | Arsenic pentoxide | 1303-28-2 | P036 | Dichlorophenylarsine | 696-28-6 |
| P012 | Arsenic trioxide | 1327-53-3 | P037 | Dieldrin | 60-57-1 |
| P038 | Arsine, diethyl- | 692-42-2 | P038 | Diethylarsine | 692-42-2 |
| P036 | Arsonous dichloride, phenyl- | 696-28-6 | P041 | Diethyl-p-nitrophenyl phosphate | 311-45-5 |
| P054 | Aziridine | 151-56-4 | P040 | O,O-Diethyl O-pyrazinyl phosphorothioate | 297-97-2 |
| P067 | Aziridine, 2-methyl- | 75-55-8 | P043 | Diisopropylfluorophosphate (DFP) | 55-91-4 |
| P013 | Barium cyanide | 542-62-1 | P004 | 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-, hexahydro-, (1alpha, 4alpha, 4beta, 5alpha, 8alpha, 8beta)- | 309-00-2 |
| P024 | Benzenamine, 4-chloro- | 106-47-8 | P060 | 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-, hexahydro-, (1alpha, 4alpha, 4beta, 5beta, 8beta, 8beta)- | 465-73-6 |
| P077 | Benzenamine, 4-nitro- | 100-01-6 | P037 | 2,7:3,6-Dimethanonaphth(2,3-b) oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3beta, 6beta, 6aalpha, 7beta, 7aalpha)- | 60-57-1 |
| P028 | Benzene, (chloromethyl)- | 100-44-7 | P051 | 2,7:3,6-Dimethanonaphth(2,3-b) oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2alpha, 3alpha, 6alpha, 6abeta, 7beta, 7aalpha)-, and metabolites | *72-20-8 |
| P042 | 1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)- | 51-43-4 | P044 | Dimethoate | 60-51-5 |
| P046 | Benzeneethanamine, alpha, alpha-dimethyl- | 122-09-8 | P046 | alpha, alpha-Dimethylphenethylamine | 122-09-8 |
| P014 | Benzenethiol | 108-98-5 | P191 | <u>Dimetilan</u> | <u>644-64-4</u> |
| P127 | <u>7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate</u> | <u>1563-66-2</u> | P047 | 4,6-Dinitro-o-cresol, and salts | *534-52-1 |
| P188 | <u>Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo [2,3-b]indol-5-yl methylcarbamate ester (1:1)</u> | <u>57-64-7</u> | P048 | 2,4-Dinitrophenol | 51-28-5 |
| P001 | <u>2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%</u> | <u>81-81-2</u> | P020 | Dinoseb | 88-85-7 |
| P028 | Benzyl chloride | 100-44-7 | P085 | Diphosphoramidate, octamethyl- | 152-16-9 |
| P015 | Beryllium powder | 7440-41-7 | P111 | Diphosphoric acid, tetraethyl ester | 107-49-3 |
| P017 | Bromoacetone | 598-31-2 | P039 | Disulfoton | 298-04-4 |
| P018 | Brucine | 357-57-3 | P049 | Dithiobiuret | 541-53-7 |
| P045 | 2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-(methylamino) carbonyl oxime | 39196-18-4 | P185 | <u>1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime</u> | <u>26419-73-8</u> |
| P021 | Calcium cyanide | 592-01-8 | P050 | Endosulfan | 115-29-7 |
| P021 | Calcium cyanide Ca(CN) ₂ | 592-01-8 | P088 | Endothal | 145-73-3 |
| P022 | Carbon disulfide | 75-15-0 | P051 | Endrin | 72-20-8 |
| P095 | Carbenic dichloride | 75-44-5 | P051 | Endrin, and metabolites | 72-20-8 |
| P189 | Carbamic acid, [(diethylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl- 7-benzofuranyl ester | 55285-14-8 | P042 | Epinephrine | 51-43-4 |
| P191 | Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester | 644-64-4 | P031 | Ethanedinitrile | 460-19-5 |
| P192 | Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H-pyrazol-5-yl ester | 119-38-0 | P194 | <u>Ethanimidothioic acid, 2-dimethyl-amino-N-[(methylamino) carbonyl]oxy-2-oxo, methyl ester</u> | <u>23135-22-0</u> |
| P190 | Carbamic acid, methyl-, 3-methylphenyl ester | 1129-41-5 | P066 | Ethanimidothioic acid, N- | 16752-77-5 |
| P127 | Carbofuran | 1563-66-2 | | | |
| P022 | Carbon disulfide | 75-15-0 | | | |
| P095 | Carbonic dichloride | 75-44-5 | | | |
| P189 | Carbosulfan | 55285-14-8 | | | |
| P023 | Chloroacetaldehyde | 107-20-0 | | | |

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| | (((methylamino)carbonyl)oxy)-,methyl ester | | P076 | Nitrogen oxide NO | 10102-43-9 |
| P101 | Ethyl cyanide | 107-12-0 | P078 | Nitrogen oxide NO ₂ | 10102-44-0 |
| P054 | Ethyleneimine | 151-56-4 | P081 | Nitroglycerine (R) | 55-63-0 |
| P097 | Famphur | 52-85-7 | P082 | N-Nitrosodimethylamine | 62-75-9 |
| P056 | Fluorine | 7782-41-4 | P084 | N-Nitrosomethylvinylamine | 4549-40-0 |
| P057 | Fluoroacetamide | 640-19-7 | P085 | Octamethylpyrophosphoramide | 152-16-9 |
| P058 | Fluoroacetic acid, sodium salt | 62-74-8 | P087 | Osmium oxide OsO ₄ , (T-4)- | 20816-12-0 |
| P198 | <u>Formetanate hydrochloride</u> | <u>23422-53-9</u> | P087 | Osmium tetroxide | 20816-12-0 |
| P197 | <u>Formparanate</u> | <u>17702-57-7</u> | P088 | 7-Oxabicyclo (2.2.1)heptane-2,3-dicarboxylic acid | 145-73-3 |
| P065 | Fulminic acid, mercury (2+) salt (R,T) | 628-86-4 | P194 | <u>Oxamyl</u> | <u>23135-22-0</u> |
| P059 | Heptachlor | 76-44-8 | P089 | Parathion | 56-38-2 |
| P062 | Hexaethyl tetraphosphate | 757-58-4 | P034 | Phenol, 2-cyclohexyl-4, 6-dinitro- | 131-89-5 |
| P116 | Hydrazinecarbothioamide | 79-19-6 | P048 | Phenol, 2, 4-dinitro | 51-28-5 |
| P068 | Hydrazine, methyl- | 60-34-4 | P047 | Phenol, 2-methyl-4,6-dinitro-, and salts | *534-52-1 |
| P063 | Hydrocyanic acid | 74-90-8 | P020 | Phenol, 2-(1-methylpropyl)-4, 6-dinitro- | 88-85-7 |
| P063 | Hydrogen cyanide | 74-90-8 | P009 | Phenol, 2,4,6-trinitro-, ammonium salt (R) | 131-74-8 |
| P096 | Hydrogen phosphide | 7803-51-2 | P128 | <u>Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)</u> | <u>315-18-4</u> |
| P060 | Isodrin | 465-73-6 | P199 | <u>Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate</u> | <u>2032-65-7</u> |
| P192 | <u>Isolan</u> | <u>119-38-0</u> | P202 | <u>Phenol, 3-(1-methylethyl)-, methylcarbamate</u> | <u>64-00-6</u> |
| P202 | <u>3-Isopropylphenyl N-methylcarbamate</u> | <u>64-00-6</u> | P201 | <u>Phenol, 3-methyl-5-(1-methylethyl)-, methylcarbamate</u> | <u>2631-37-0</u> |
| P007 | 3(2H)-isoxazolone,5-(aminomethyl)- | 2763-96-4 | P092 | Phenylmercury acetate | 62-38-4 |
| P196 | <u>Manganese, bis(dimethylcarbamodithioato-S,S')-,</u> | <u>15339-36-3</u> | P093 | Phenylthiourea | 103-85-5 |
| P196 | <u>Manganese dimethyldithiocarbamate</u> | <u>15339-36-3</u> | P094 | Phorate | 298-02-2 |
| P092 | Mercury, (acetato-O) phenyl- | 62-38-4 | P095 | Phosgene | 75-44-5 |
| P065 | Mercury fulminate (R,T) | 628-86-4 | P096 | Phosphine | 7803-51-2 |
| P082 | Methanamine,N-methyl-N-nitroso- | 62-75-9 | P041 | Phosphoric acid, diethyl 4-nitrophenyl ester | 311-45-5 |
| P064 | Methane, isocyanato- | 624-83-9 | P039 | Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio)ethyl) ester | 298-04-4 |
| P016 | Methane, oxybis (chloro- | 542-88-1 | P094 | Phosphorodithioic acid, 0,0-diethyl S-(ethylthio)methyl ester | 298-02-2 |
| P112 | Methane, tetranitro-(R) | 509-14-8 | P044 | Phosphorodithioic acid, O, O-dimethyl S-(2-(methylamino)-2-oxoethyl) ester | 60-51-5 |
| P118 | Methanethiol, trichloro- | 75-70-7 | P043 | Phosphorofluoric acid, bis (1-methylethyl) ester | 55-91-4 |
| P198 | <u>Methanimidamide, N,N-dimethyl-N'-[3-(((methylamino)carbonyl[oxy]phenyl)-, monohydrochloride</u> | <u>23422-53-9</u> | P089 | Phosphorothioic acid, O, O-diethyl O-(4-nitrophenyl) ester | 56-38-2 |
| P197 | <u>Methanimidamide, N,N-dimethyl-N'[2-methyl-4-(((methylamino)carbonyl[oxy]phenyl)-</u> | <u>17702-57-7</u> | P040 | Phosphorothioic acid, O, O-diethyl O-pyrazinyl ester | 297-97-2 |
| P050 | 6,9-Methano-2,4,3-benzodioxathiepen, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3-oxide | 115-29-7 | P097 | Phosphorothioic acid, O-(4-((dimethylamino) sulfonyl) phenyl) 0,0-dimethyl ester | 52-85-7 |
| P059 | 4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro- | 76-44-8 | P071 | Phosphorothioic acid, 0,0-dimethyl O-(4-nitrophenyl) ester | 298-00-0 |
| P199 | <u>Methiocarb</u> | <u>2032-65-7</u> | P204 | <u>Physostigmine</u> | <u>57-47-6</u> |
| P066 | Methomyl | 16752-77-5 | P188 | <u>Physostigmine salicylate</u> | <u>57-64-7</u> |
| P068 | Methyl hydrazine | 60-34-4 | P110 | Plumbane, tetraethyl- | 78-00-2 |
| P064 | Methyl isocyanate | 624-83-9 | P098 | Potassium cyanide | 151-50-8 |
| P069 | 2-Methylactonitrile | 75-86-5 | P098 | Potassium cyanide K(CN) | 151-50-8 |
| P071 | Methyl parathion | 298-00-0 | P099 | Potassium silver cyanide | 506-61-6 |
| P190 | <u>Metolcarb</u> | <u>1129-41-5</u> | P201 | <u>Promecarb</u> | <u>2631-37-0</u> |
| P128 | <u>Mexacarbate</u> | <u>315-8-4</u> | P203 | <u>Propanal, 2-methyl-2(methylsulfonyl)-,O-(((methylamino)carbonyl]oxime</u> | <u>1646-88-4</u> |
| P072 | alpha-Naphthylthiourea | <u>[2032-65-7]</u> | P070 | Propanal, 2-methyl-2-(methylthio)-,O-(((methylamino)carbonyl]oxime | 116-06-3 |
| P073 | Nickel carbonyl | 86-88-4 | P101 | Propanenitrile | 107-12-0 |
| P073 | Nickel carbonyl Ni(CO) ₄ , (T-4)- | 13463-39-3 | | | |
| P074 | Nickel cyanide | 13463-39-3 | | | |
| P074 | Nickel cyanide Ni(CN) ₂ | 557-19-7 | | | |
| P075 | Nicotine, and salts | 557-19-7 | | | |
| P076 | Nitric oxide | *54-11-5 | | | |
| P077 | p-Nitroaniline | 10102-43-9 | | | |
| P078 | Nitrogen dioxide | 100-01-6 | | | |
| | | 10102-44-0 | | | |

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| P027 | Propanenitrile, 3-chloro- | 542-76-7 |
| P069 | Propanenitrile, 2-hydroxy-2-methyl- | 75-86-5 |
| P081 | 1,2,3-Propanetriol, trinitrate (R) | 55-63-0 |
| P017 | 2-Propanone, 1-bromo- | 598-31-2 |
| P102 | Propargyl alcohol | 107-19-7 |
| P003 | 2-Propenal | 107-02-8 |
| P005 | 2-Propen-1-ol | 107-18-6 |
| P067 | 1,2-Propylenimine | 75-55-8 |
| P102 | 2-Propyn-1-ol | 107-19-7 |
| P008 | 4-Pyridinamine | 504-24-5 |
| P075 | Pyridine,3-(1-methyl-2-pyrrolidinyl)-,(S)-, and salts | *54-11-5 |
| <u>P204</u> | <u>Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro- 1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-</u> | <u>57-47-6</u> |
| P114 | Selenious acid, dithallium(1+)salt | 12039-52-0 |
| P103 | Selenourea | 630-10-4 |
| P104 | Silver cyanide | 506-64-9 |
| P104 | Silver cyanide Ag(CN) | 506-64-9 |
| P105 | Sodium azide | 26628-22-8 |
| P106 | Sodium cyanide | 143-33-9 |
| P106 | Sodium cyanide Na(CN) | 143-33-9 |
| P108 | Strychnidin-10-one, and salts | *57-24-9 |
| P018 | Strychnidin-10-one, 2, 3-dimethoxy- | 357-57-3 |
| P108 | Strychnine, and salts | *57-24-9 |
| P115 | Sulfuric acid, dithallium (1+)salt | 7446-18-6 |
| P109 | Tetraethyldithiopyrophosphate | 3689-24-5 |
| P110 | Tetraethyl lead | 78-00-2 |
| P111 | Tetraethyl pyrophosphate | 107-49-3 |
| P112 | Tetranitromethane (R) | 509-14-8 |
| P062 | Tetraphosphoric acid, hexa-ethyl ester | 757-58-4 |
| P113 | Thallic oxide | 1314-32-5 |
| P113 | Thallium oxide Tl ₂ O ₃ | 1314-32-5 |
| P114 | Thallium (I) selenite | 12039-52-0 |
| P115 | Thallium (I) sulfate | 7446-18-6 |
| P109 | Thiodiphosphoric acid, tetra-ethyl ester | 3689-24-5 |
| P045 | Thiofanox | 39196-18-4 |
| P049 | Thioimidodicarbonic diamide ((H ₂ N)C(S)) ₂ NH | 541-53-7 |
| P014 | Thiophenol | 108-98-5 |
| P116 | Thiosemicarbazide | 79-19-6 |
| P026 | Thiourea, (2-chlorophenyl)- | 5344-82-1 |
| P072 | Thiourea, 1-naphthalenyl- | 86-88-4 |
| P093 | Thiourea, phenyl- | 103-85-5 |
| <u>P185</u> | <u>Tirpate</u> | <u>26419-73-8</u> |
| P123 | Toxaphene | 8001-35-2 |
| P118 | Trichloromethanethiol | 75-70-7 |
| P119 | Vanadic acid, ammonium salt | 7803-55-6 |
| P120 | Vanadium oxide V ₂ O ₅ | 1314-62-1 |
| P120 | Vanadium pentoxide | 1314-62-1 |
| P084 | Vinylamine, N-methyl-N-nitroso- | 4549-40-0 |
| P001 | Warfarin, and salts, when present at concentrations greater than 0.3% | *81-81-2 |
| <u>P205</u> | <u>Zinc, bis(dimethylcarbamato-dithioato-S,S')-</u> | <u>137-30-4</u> |
| P121 | Zinc cyanide | 557-21-1 |
| P121 | Zinc cyanide Zn(CN) ₂ | 557-21-1 |
| P122 | Zinc phosphide Zn ₃ P ₂ , when present at concentrations greater than 10% (R,T) | 1314-84-7 |
| <u>P205</u> | <u>Ziram</u> | <u>137-30-4</u> |

*CAS number given for parent compound only

(6) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in subsections (1) to (4) of this section, are identified as toxic wastes (T), unless otherwise designated, and are subject to the conditionally exempt small [limited] quantity generator exclusion in Section 5[(1), (6), and (7)] of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

| Hazardous Waste No. | Substance | Chemical Abstracts No. |
|---------------------|--|------------------------|
| | | <u>30558-43-1</u> |
| U394 | A2213 | |
| U001 | Acetaldehyde (I) | 75-07-0 |
| U034 | Acetaldehyde, trichloro- | 75-87-6 |
| U187 | Acetamide, N-(4-ethoxyphenyl)- | 62-44-2 |
| U005 | Acetamide, N-9H-fluoren-2-yl- | 53-96-3 |
| U240 | Acetic acid, (2,4-dichloro-phenoxy)-, salts and esters | *94-75-7 |
| U112 | Acetic acid ethyl ester (I) | 141-78-6 |
| U144 | Acetic acid, lead (2+) salt | 301-04-2 |
| U214 | Acetic acid, thallium (1+) salt | 563-68-8 |
| See F027 | Acetic acid, (2,4,5-trichlorophenoxy)- | 93-76-5 |
| U002 | Acetone (I) | 67-64-1 |
| U003 | Acetonitrile (I,T) | 75-05-8 |
| U004 | Acetophenone | 98-86-2 |
| U005 | 2-Acetylaminofluorene | 53-96-3 |
| U006 | Acetyl chloride (C,R,T) | 75-36-5 |
| U007 | Acrylamide | 79-06-1 |
| U008 | Acrylic acid (I) | 79-10-7 |
| U009 | Acrylonitrile | 107-13-1 |
| U011 | Amitrole | 61-82-5 |
| U012 | Aniline (I,T) | 62-53-3 |
| U136 | Arsinic acid, dimethyl- | 75-60-5 |
| U014 | Auramine | 492-80-8 |
| U015 | Azaserine | 115-02-6 |
| <u>U365</u> | <u>H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester</u> | <u>2212-67-1</u> |
| U010 | Azirino (2',3':3,4) pyrrolo (1,2-a) indole-4, 7-dione, 6-amino-8-(((aminocarbonyl)oxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS- (1aalpha, 8beta, 8aalpaa, 8balpaa))- | 50-07-7 |
| <u>U280</u> | <u>Barban</u> | <u>101-27-9</u> |
| <u>U278</u> | <u>Bendiocarb</u> | <u>22781-23-3</u> |
| <u>U364</u> | <u>Bendiocarb phenol</u> | <u>22961-82-6</u> |
| <u>U271</u> | <u>Benomyl</u> | <u>17804-35-2</u> |
| U157 | Benz(j)aceanthrylene, 1,2-dihydro-3-methyl- | 56-49-5 |
| U016 | Benz(c)acridine | 225-51-4 |
| U017 | Benzal chloride | 98-87-3 |
| U192 | Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)- | 23950-58-5 |
| U018 | Benz(a)anthracene | 56-55-3 |
| U094 | Benz(a)anthracene, 7,12-dimethyl- | 57-97-6 |
| U012 | Benzenamine (I,T) | 62-53-3 |
| U014 | Benzenamine, 4,4'-carbon-imido-bis (N,N-dimethyl- | 492-80-8 |
| U049 | Benzenamine, 4-chloro-2-methyl-,hydrochloride | 3165-93-3 |
| U093 | Benzenamine, N, N-dimethyl- | 60-11-7 |

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| U328 | 4-(phenylazo)- Benzenamine, 2-methyl- | 95-53-4 | U064 | Benzo(rst)pentaphene | 189-55-9 |
| U353 | Benzenamine, 4-methyl- | 106-49-0 | U248 | 2H-1-Benzopyran-2-one, 4- hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations of 0.3% or less | *81-81-2 |
| U158 | Benzenamine, 4,4'-methylenebis (2-chloro- | 101-14-4 | | | |
| U222 | Benzenamine, 2-methyl-, hydrochloride | 636-21-5 | U022 | Benzo(a)pyrene | 50-32-8 |
| U181 | Benzenamine, 2-methyl-5-nitro | 99-55-8 | U197 | p-Benzoquinone | 106-51-4 |
| U019 | Benzene (I,T) | 71-43-2 | U023 | Benzotrchloride (C,R,T) | 98-07-7 |
| U038 | Benzeneacetic acid, 4-chloro- alpha-(4-chlorophenyl)-alpha- hydroxy-, ethyl ester | 510-15-6 | U085 | 2,2'-Bioxirane | 1464-53-5 |
| | | | U021 | (1,1'-Biphenyl)-4,4'-diamine | 92-87-5 |
| | | | U073 | (1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro- | 91-94-1 |
| U030 | Benzene, 1-bromo-4-phenoxy- | 101-55-3 | U091 | (1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy- | 119-90-4 |
| U035 | Benzenebutanoic acid, 4-(bis (2-chloroethyl)amino)- | 305-03-3 | U095 | (1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl- | 119-93-7 |
| U037 | Benzene, chloro- | 108-90-7 | U401 | <u>Bis(dimethylthiocarbamoyl)</u> <u>sulfide</u> | <u>97-74-5</u> |
| U221 | Benzenediamine, ar-methyl- | 25376-45-8 | U400 | <u>Bis(pentamethylene)thiuram</u> <u>tetrasulfide</u> | <u>120-54-7</u> |
| U028 | 1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester | 117-81-7 | U225 | Bromoform | 75-25-2 |
| U069 | 1,2-Benzenedicarboxylic acid, dibutyl ester | 84-74-2 | U030 | 4-Bromophenyl phenyl ether | 101-55-3 |
| U088 | 1,2-Benzenedicarboxylic acid, diethyl ester | 84-66-2 | U128 | 1,3-Butadiene, 1,1,2,3,4,4- hexachloro- | 87-68-3 |
| U102 | 1,2-Benzenedicarboxylic acid, dimethyl ester | 131-11-3 | U172 | 1-Butanamine, N-butyl-N-nitroso- | 924-16-3 |
| U107 | 1,2-Benzenedicarboxylic acid, dioctyl ester | 117-84-0 | U031 | 1-Butanol (I) | 71-36-3 |
| U070 | Benzene, 1,2-dichloro- | 95-50-1 | U159 | 2-Butanone (I,T) | 78-93-3 |
| U071 | Benzene, 1,3-dichloro- | 541-73-1 | U160 | 2-Butanone, peroxide (R,T) | 1338-23-4 |
| U072 | Benzene, 1,4-dichloro- | 106-46-7 | U053 | 2-Butenal | 4170-30-3 |
| U060 | Benzene, 1,1'-(2,2-dichloro- ethylidene)bis(4-chloro- | 72-54-8 | U074 | 2-Butene, 1,4-dichloro- (I,T) | 764-41-0 |
| | | | U143 | 2-Butenoic acid, 2-methyl-, 7-((2,3- dihydroxy-2-(1-methoxyethyl)-3-methyl- 1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro- 1H-pyrrolizin-1-yl ester, (1S-(1alpha(Z), 7(2S*,3R*),7aalpha))- | 303-34-4 |
| U017 | Benzene, (dichloromethyl)- | 98-87-3 | U031 | <u>n-Butyl alcohol (I)</u> | <u>71-36-3</u> |
| U223 | Benzene, 1,3-diisocyanato- methyl- (R,T) | 26471-62-5 | U392 | <u>Butylate</u> | <u>2008-41-5</u> |
| U239 | Benzene, dimethyl- (I,T) | 1330-20-7 | U031 | n-Butyl alcohol (I) | 71-36-3 |
| U201 | 1,3-Benzenediol | 108-46-3 | U136 | Cacodylic acid | 75-60-5 |
| U127 | Benzene, hexachloro- | 118-74-1 | U032 | Calcium chromate | 13765-19-0 |
| U056 | Benzene, hexahydro-(I) | 110-82-7 | U372 | <u>Carbamic acid, 1H-benzimidazol-</u> <u>2-yl, methyl ester</u> | <u>10605-21-7</u> |
| U220 | Benzene, methyl- | 108-88-3 | U271 | <u>Carbamic acid, [1-[(butylamino)</u> <u>carbonyl]-1H-benzimidazol-2-yl]-,</u> <u>methyl ester</u> | <u>17804-35-2</u> |
| U105 | Benzene, 1-methyl-2, 4-dinitro- | 121-14-2 | U375 | <u>Carbamic acid, butyl-, 3-iodo-</u> <u>2-propynyl ester</u> | <u>55406-53-6</u> |
| U106 | Benzene, 2-methyl-1,3-dinitro- | 606-20-2 | U280 | <u>Carbamic acid, (3-chlorophenyl)-,</u> <u>4-chloro-2-butylnyl ester</u> | <u>101-27-9</u> |
| U055 | Benzene, (1-methylethyl)-(I) | 98-82-8 | U238 | Carbamic acid, ethyl ester | 51-79-6 |
| U169 | Benzene, nitro- | 98-95-3 | U178 | Carbamic acid, methyl nitroso-, ethyl ester | 615-53-2 |
| U183 | Benzene, pentachloro- | 608-93-5 | U373 | <u>Carbamic acid, phenyl-, 1-</u> <u>methylethyl ester</u> | <u>122-42-9</u> |
| U185 | Benzene, pentachloronitro- | 82-68-8 | U409 | <u>Carbamic acid, [1,2-phenylenebis</u> <u>(iminocarbonothioyl)]bis-, dimethyl</u> <u>ester</u> | <u>23564-05-8</u> |
| U020 | Benzenesulfonic acid chloride (C,R) | 98-09-9 | U097 | Carbamic chloride, dimethyl- | 79-44-7 |
| U020 | Benzenesulfonyl chloride (C,R) | 98-09-9 | U379 | <u>Carbamodithioic acid, dibutyl,</u> <u>sodium salt</u> | <u>136-30-1</u> |
| U207 | Benzene, 1,2,4,5-tetrachloro- | 95-94-3 | U277 | <u>Carbamodithioic acid, diethyl-,</u> <u>2-chloro-2-propenyl ester</u> | <u>95-06-7</u> |
| U061 | Benzene, 1,1'-(2,2,2-tri- chloroethylidene)bis(4-chloro- | 50-29-3 | U381 | <u>Carbamodithioic acid, diethyl-,</u> <u>sodium salt</u> | <u>148-18-5</u> |
| | | | U383 | <u>Carbamodithioic acid, dimethyl,</u> <u>potassium salt</u> | <u>128-03-0</u> |
| U247 | Benzene, 1,1'-(2,2,2-tri- chloroethylidene)bis(4-methoxy- | 72-43-5 | U382 | <u>Carbamodithioic acid, dimethyl-,</u> | <u>128-04-1</u> |
| U023 | Benzene, (trichloromethyl)- | 98-07-7 | | | |
| U234 | Benzene, 1,3,5-trinitro- | 99-35-4 | | | |
| U021 | Benzidine | 92-87-5 | | | |
| U202 | 1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, and salts | *81-07-02 | | | |
| U278 | <u>1,3-Benzodioxol-4-ol, 2,2-</u> <u>dimethyl-, methyl carbamate</u> | <u>22781-23-3</u> | | | |
| U364 | <u>1,3-Benzodioxol-4-ol, 2,2-</u> <u>dimethyl-</u> | <u>22961-82-6</u> | | | |
| U203 | 1,3-Benzodioxole, 5-(2-propenyl)- | 94-59-7 | | | |
| U141 | 1,3-Benzodioxole, 5-(1-propenyl)- | 120-58-1 | | | |
| U367 | <u>7-Benzofuranol, 2,3-dihydro-</u> <u>2,2-dimethyl-</u> | <u>1563-38-8</u> | | | |
| U090 | 1,3-Benzodioxole, 5-propyl- | 94-58-6 | | | |

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| U376 | sodium salt Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothio-selenious acid | 144-34-3 | U057 | hexachloro-(1alpha, 2alpha, 3beta, 4alpha, 5alpha, 6beta)-Cyclohexanone (I) | 108-94-1 |
| U378 | Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt | 51026-28-9 | U130 | 1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro- | 77-47-4 |
| U384 | Carbamodithioic acid, methyl-, monosodium salt | 137-42-8 | U058 | Cyclophosphamide | 50-18-0 |
| U377 | Carbamodithioic acid, methyl-, monopotassium salt | 137-41-7 | U240 | 2,4-D, salts and esters | *94-75-7 |
| U389 | Carbamodithioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl)ester | 2303-17-5 | U059 | Daunomycin | 20830-81-3 |
| U392 | Carbamodithioic acid, bis(2-methylpropyl)-, S-ethyl ester | 2008-41-5 | U366 | Dazomet | 533-74-4 |
| U391 | Carbamodithioic acid, butylethyl-, S-propyl ester | 1114-71-2 | U060 | DDD | 72-54-8 |
| U386 | Carbamodithioic acid, cyclohexylethyl-, S-ethyl ester | 1134-23-2 | U061 | DDT | 50-29-3 |
| U390 | Carbamodithioic acid, dipropyl-, S-ethyl ester | 759-94-4 | U062 | Diallate | 2303-16-4 |
| U387 | Carbamodithioic acid, dipropyl-, S-(phenylmethyl) ester | 5288-80-9 | U063 | Dibenz(a,h) anthracene | 53-70-3 |
| U385 | Carbamodithioic acid, dipropyl-, S-propyl ester | 1929-77-7 | U064 | Dibenzo(a,i) pyrene | 189-55-9 |
| U114 | Carbamodithioic acid, 1,2-ethanedilyl-, salts and esters | *111-54-6 | U066 | 1,2-Dibromo-3-chloropropane | 96-12-8 |
| U062 | Carbamodithioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester | 2302-16-4 | U069 | Dibutyl phthalate | 84-74-2 |
| U279 | Carbaryl | 63-25-2 | U070 | o-Dichlorobenzene | 95-50-1 |
| U372 | Carbendazim | 10605-21-7 | U071 | m-Dichlorobenzene | 541-73-1 |
| U367 | Carbofuran phenol | 1563-38-8 | U072 | p-Dichlorobenzene | 106-46-7 |
| U215 | Carbonic acid, dithallium (1+) salt | 6533-73-9 | U073 | 3,3'-Dichlorobenzidine | 91-94-1 |
| U033 | Carbonic difluoride | 353-50-4 | U074 | 1,4-Dichloro-2-butene (I,T) | 764-41-0 |
| U156 | Carbonochloridic acid, methyl ester (I,T) | 79-22-1 | U075 | Dichlorodifluoromethane | 75-71-8 |
| U033 | Carbon oxyfluoride (R,T) | 353-50-4 | U078 | 1,1-Dichloroethylene | 75-35-4 |
| U211 | Carbon tetrachloride | 56-23-5 | U079 | 1,2-Dichloroethylene | 156-60-5 |
| U034 | Chloral | 75-87-6 | U025 | Dichloroethyl ether | 111-44-4 |
| U035 | Chlorambucil | 305-03-3 | U027 | Dichloroisopropyl ether | 108-60-1 |
| U036 | Chlordane, alpha and gamma isomers | 57-74-9 | U024 | Dichloromethoxy ethane | 111-91-1 |
| U026 | Chlornaphazin | 494-03-1 | U081 | 2,4-Dichlorophenol | 120-83-2 |
| U037 | Chlorobenzene | 108-90-7 | U082 | 2,6-Dichlorophenol | 87-65-0 |
| U038 | Chlorobenzilate | 510-15-6 | U084 | 1,3-Dichloropropene | 542-75-6 |
| U039 | p-Chloro-m-cresol | 59-50-7 | U085 | 1,2:3,4-Diepoxybutane (I,T) | 1464-53-5 |
| U042 | 2-Chloroethyl vinyl ether | 110-75-8 | U108 | 1,4-Diethyleneoxide | 123-91-1 |
| U044 | Chloroform | 67-66-3 | U028 | Diethylhexyl phthalate | 117-81-7 |
| U046 | Chloromethyl methyl ether | 107-30-2 | U395 | Diethylene glycol, dicarbamate | 5952-26-1 |
| U047 | beta-Chloronaphthalene | 91-58-7 | U086 | N, N'-Diethylhydrazine | 1615-80-1 |
| U048 | o-Chlorophenol | 95-57-8 | U087 | O, O-Diethyl S-methyl dithio-phosphate | 3288-58-2 |
| U049 | 4-Chloro-o-toluidine, hydrochloride | 3165-93-3 | U088 | Diethyl phthalate | 84-66-2 |
| U032 | Chromic acid H ₂ CrO ₄ , calcium salt | 13765-19-0 | U089 | Diethylstilbesterol | 56-53-1 |
| U050 | Chrysene | 218-01-9 | U090 | Dihydrosafrole | 94-58-6 |
| U393 | Copper, bis(dimehtylcarbamo-dithioato-S,S') | 137-29-1 | U091 | 3,3'-Dimethoxybenzidine | 119-90-4 |
| U393 | Copper dimethyldithiocarbamate | 137-29-1 | U092 | Dimethylamine (I) | 124-40-3 |
| U051 | Creosote | ----- | U093 | p-Dimethylaminoazobenzene | 60-11-7 |
| U052 | Cresol (Cresylic acid) | 1319-77-3 | U094 | 7,12-Dimethylbenz(a)anthracene | 57-97-6 |
| U053 | Crotonaldehyde | 4170-30-3 | U095 | 3,3'-Dimethylbenzidine | 119-93-7 |
| U055 | Cumene (I) | 98-82-8 | U096 | alpha, alpha-Dimethylbenzyl-hydroperoxide (R) | 80-15-9 |
| U246 | Cyanogen bromide (CN) Br | 506-68-3 | U097 | Dimethylcarbamoyl chloride | 79-44-7 |
| U386 | Cycloate | 1134-23-2 | U098 | 1,1-Dimethylhydrazine | 57-14-7 |
| U197 | 2,5-Cyclohexadiene-1,4-dione | 106-51-4 | U099 | 1,2-Dimethylhydrazine | 540-73-8 |
| U056 | Cyclohexane (I) | 110-82-7 | U101 | 2,4-Dimethylphenol | 105-67-9 |
| U129 | Cyclohexane, 1,2,3,4,5,6- | 58-89-9 | U102 | Dimethyl phthalate | 131-11-3 |
| | | | U103 | Dimethyl sulfate | 77-78-1 |
| | | | U105 | 2,4-Dinitrotoluene | 121-14-2 |
| | | | U106 | 2,6-Dinitrotoluene | 606-20-2 |
| | | | U107 | Di-n-octyl phthalate | 117-84-0 |
| | | | U108 | 1,4-Dioxane | 123-91-1 |
| | | | U109 | 1,2-Diphenylhydrazine | 122-66-7 |
| | | | U110 | Dipropylamine (I) | 142-84-7 |
| | | | U111 | Di-n-propylnitrosamine | 621-64-7 |
| | | | U403 | Disulfiram | 97-77-8 |
| | | | U390 | EPTC | 759-94-4 |
| | | | U041 | Epichlorohydrin | 106-89-8 |
| | | | U001 | Ethanal (I) | 75-07-0 |
| | | | U404 | Ethanamine, N,N-diethyl- | 121-44-8 |
| | | | U174 | Ethanamine, N-ethyl-N-nitroso- | 55-18-5 |
| | | | U155 | 1,2-Ethanediamine, N,N-di- | 91-80-5 |

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| | methy1-N'-2-pyridinyl-N'- (2-thienylmethyl)- | | U128 | Hexachlorobutadiene | 87-68-3 |
| U067 | Ethane, 1,2-dibromo- | 106-93-4 | U130 | Hexachlorocyclopentadiene | 77-47-4 |
| U076 | Ethane, 1,1-dichloro- | 75-34-3 | U131 | Hexachloroethane | 67-72-1 |
| U077 | Ethane, 1,2-dichloro- | 107-06-2 | U132 | Hexachlorophene | 70-30-4 |
| U131 | Ethane, hexachloro- | 67-72-1 | U243 | Hexachloropropene | 1888-71-7 |
| U024 | Ethane, 1,1'-(methylenebis (oxy))bis(2-chloro-) | 111-91-1 | U133 | Hydrazine (R,T) | 302-01-2 |
| U117 | Ethane, 1,1'-oxybis- (I) | 60-29-7 | U086 | Hydrazine,1,2-diethyl- | 1615-80-1 |
| U025 | Ethane, 1,1'-oxybis(2-chloro-) | 111-44-4 | U098 | Hydrazine,1,1-dimethyl- | 57-14-7 |
| U184 | Ethane, pentachloro- | 76-01-7 | U099 | Hydrazine,1,2-dimethyl- | 540-73-8 |
| U208 | Ethane, 1,1,1,2-tetrachloro- | 630-20-6 | U109 | Hydrazine,1,2-diphenyl- | 122-66-7 |
| U209 | Ethane, 1,1,2,2-tetrachloro- | 79-34-5 | U134 | Hydrofluoric acid (C,T) | 7664-39-3 |
| U218 | Ethanethioamide | 62-55-5 | U134 | Hydrogen fluoride (C,T) | 7664-39-3 |
| U226 | Ethane, 1,1,1-trichloro | 71-55-6 | U135 | Hydrogen sulfide | 7783-06-4 |
| U227 | Ethane, 1,1,2-trichloro- | 79-00-5 | U135 | Hydrogen sulfide H ₂ S | 7783-06-4 |
| U410 | Ethanimidothioic acid, N,N'- <u>(thiobis(methylimino) carbonyl-</u> <u>oxy))bis-, dimethyl ester</u> | 59669-26-0 | U096 | Hydroperoxide, 1-methyl-1- phenylethyl-(R) | 80-15-9 |
| U394 | Ethanimidothioic acid, 2- <u>(dimethylamino)-N-hydroxy-</u> <u>2-oxo-, methyl ester</u> | 30558-43-1 | U116 | 2-Imidazolidinethione | 96-45-7 |
| U359 | Ethanol, 2-ethoxy- | 110-80-5 | U137 | Indeno(1,2,3-cd) pyrene | 193-39-5 |
| U173 | Ethanol, 2,2'-(nitrosoimino)bis- | 1116-54-7 | U375 | 3-Iodo-2-propynyl n-butylcarbamate | 55406-53-6 |
| U395 | Ethanol, 2,2'-oxybis-, dicarbamate | 5952-26-1 | U396 | <u>Iron, tris(dimethylcarba-</u> <u>modithioato-S,S')</u> | 14484-64-1 |
| U004 | Ethanone, 1-phenyl | 98-86-2 | U190 | 1,3-Isobenzofurandione | 85-44-9 |
| U043 | Ethene, chloro- | 75-01-4 | U140 | Isobutyl alcohol (I,T) | 78-83-1 |
| U042 | Ethene, (2-chloroethoxy)- | 110-75-8 | U141 | Isosafrole | 120-58-1 |
| U078 | Ethene, 1,1-dichloro- | 75-35-4 | U142 | Kepone | 143-50-0 |
| U079 | Ethene, 1,2-dichloro-, (E) | 156-60-5 | U143 | Lasiocarpine | 303-34-4 |
| U210 | Ethene, tetrachloro- | 127-18-4 | U144 | Lead acetate | 301-04-2 |
| U228 | Ethene, trichloro- | 79-01-6 | U146 | Lead, bis(acetato-0)tetrahydroxytri- | 1335-32-6 |
| U112 | Ethyl acetate (I) | 141-78-6 | U145 | Lead phosphate | 7446-27-7 |
| U113 | Ethyl acrylate (I) | 140-88-5 | U146 | Lead subacetate | 1335-32-6 |
| U238 | Ethyl carbamate (urethane) | 51-79-6 | U129 | Lindane | 58-89-9 |
| U117 | Ethyl ether (I) | 60-29-7 | U163 | MNNG | 70-25-7 |
| U114 | Ethylenebisdithiocarbamic acid, salts and esters | *111-54-6 | U147 | Maleic anhydride | 108-31-6 |
| U067 | Ethylene dibromide | 106-93-4 | U148 | Maleic hydrazide | 123-33-1 |
| U077 | Ethylene dichloride | 107-06-2 | U149 | Malononitrile | 109-77-3 |
| U359 | Ethylene glycol monoethyl ether | 110-80-5 | U150 | Melphalan | 148-82-3 |
| U115 | Ethylene oxide (1,T) | 75-21-8 | U151 | Mercury | 7439-97-6 |
| U116 | Ethylenethiourea | 96-45-7 | U384 | <u>Metam Sodium</u> | 137-42-8 |
| U117 | Ethyl ether (I) | 60-29-7 | U152 | Methacrylonitrile (I,T) | 126-98-7 |
| U076 | Ethylidene dichloride | 75-34-3 | U092 | Methanamine, N-methyl- (I) | 124-40-3 |
| U118 | Ethyl methacrylate | 97-63-2 | U029 | Methane, bromo- | 74-83-9 |
| U119 | Ethyl methanesulfonate | 62-50-0 | U045 | Methane, chloro- (I,T) | 74-87-3 |
| U407 | <u>Ehtyl Ziram</u> | <u>14324-55-1</u> | U046 | Methane, chloromethoxy- | 107-30-2 |
| U396 | <u>Ferbam</u> | <u>14484-64-1</u> | U068 | Methane, dibromo- | 74-95-3 |
| U120 | Fluoranthene | 206-44-0 | U080 | Methane, dichloro- | 75-09-2 |
| U122 | Formaldehyde | 50-00-0 | U075 | Methane, dichlorodifluoro- | 75-71-8 |
| U123 | Formic acid (C,T) | 64-18-6 | U138 | Methane, iodo- | 74-88-4 |
| U124 | Furan (I) | 110-00-9 | U119 | Methanesulfonic acid, ethyl ester | 62-50-0 |
| U125 | 2-Furancarboxaldehyde (I) | 98-01-1 | U211 | Methane, tetrachloro- | 56-23-5 |
| U147 | 2,5-Furandione | 108-31-6 | U153 | Methanethiol (I,T) | 74-93-1 |
| U213 | Furan, tetrahydro- (I) | 109-99-9 | U225 | Methane, tribromo- | 75-25-2 |
| U125 | Furfural (I) | 98-01-1 | U044 | Methane, trichloro- | 67-66-3 |
| U124 | Furfuran (I) | 110-00-9 | U121 | Methane, trichlorofluoro- | 75-69-4 |
| U206 | Glucopyranose, 2-deoxy-2-(3- methyl-3-nitrosoareido)-,D- | 18883-66-4 | U036 | 4,7-Methano-1H-indene, 1,2, 4,5,6,7,8,8-octachloro-2,3, 3a,4,7,7a-hexahydro- | 57-74-9 |
| U206 | D-Glucose, 2-deoxy-2- (((methylnitrosoamino)- carbonyl(amino)- | 18883-66-4 | U154 | Methanol (I) | 67-56-1 |
| U126 | Glycidylaldehyde | 765-34-4 | U155 | Methapyrilene | 91-80-5 |
| U163 | Guanidine, N-methyl- N'-nitro-N-nitroso- | 70-25-7 | U142 | 1,3,4-Metheno-2H-cyclobuta (cd)pentalen-2-one, 1,1a,3, 3a,4,5,5a,5b,6-decachloro- | 143-50-0 |
| U127 | Hexachlorobenzene | 118-74-1 | U247 | octahydro- | |
| | | | U154 | Methoxychlor | 72-43-5 |
| | | | U029 | Methyl alcohol (I) | 67-56-1 |
| | | | U186 | Methyl bromide | 74-83-9 |
| | | | U045 | 1-Methylbutadiene (I) | 504-60-9 |
| | | | | Methyl chloride (I,T) | 74-87-3 |

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| U156 | Methyl chlorocarbonate (I,T) | 79-22-1 | U048 | Phenol,2-chloro- | 95-57-8 |
| U226 | Methyl chloroform | 71-55-6 | U039 | Phenol,4-chloro-3-methyl- | 59-50-7 |
| U157 | 3-Methylcholanthrene | 56-49-5 | U081 | Phenol,2,4-dichloro- | 120-83-2 |
| U158 | 4,4'-Methylenebis (2-chloro-aniline) | 101-14-4 | U082 | Phenol,2,6-dichloro- | 87-65-0 |
| U068 | Methylene bromide | 74-95-3 | U089 | Phenol,4,4'-(1,2-diethyl-1,2-ethenediyl)bis-,(E)- | 56-53-1 |
| U080 | Methylene chloride | 75-09-2 | U101 | Phenol,2,4-dimethyl- | 105-67-9 |
| U159 | Methyl ethyl ketone (MEK) (I,T) | 78-93-3 | U052 | Phenol, methyl- | 1319-77-3 |
| U160 | Methyl ethyl ketone peroxide (R,T) | 1338-23-4 | U132 | Phenol,2,2'-methylenebis (3,4,6-trichloro- | 70-30-4 |
| U138 | Methyl iodide | 74-88-4 | U411 | Phenol, 2-(1-methylethoxy)-methylcarbamate | 114-26-1 |
| U161 | Methyl isobutyl ketone (I) | 108-10-1 | U170 | Phenol,4-nitro- | 100-02-7 |
| U162 | Methyl methacrylate (I,T) | 80-62-6 | See F027 | Phenol, pentachloro- | 87-86-5 |
| U161 | 4-Methyl-2-pentanone (I) | 108-10-1 | See F027 | Phenol,2,3,4,6-tetrachloro- | 58-90-2 |
| U164 | Methylthiouracil | 56-04-2 | See F027 | Phenol,2,4,5-trichloro- | 95-95-4 |
| U010 | Mitomycin C | 50-07-7 | See F027 | Phenol,2,4,6-trichloro | 88-06-2 |
| U365 | Molinate | 2212-67-1 | U150 | L-Phenylalanine, 4-(bis(2-chloroethyl)amino)- | 148-82-3 |
| U059 | 5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxyl)-7,8,9,10,tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)- | 20830-81-3 | U145 | Phosphoric acid, lead (2+) salt (2:3) | 7446-27-7 |
| U167 | 1-Naphthalenamine | 134-32-7 | U087 | Phosphorodithioic acid,0,0-diethyl S-methyl ester | 3288-58-2 |
| U168 | 2-Naphthalenamine | 91-59-8 | U189 | Phosphorus sulfide (R) | 1314-80-3 |
| U026 | Naphthalenamine,N,N'-bis (2-chloroethyl)- | 494-03-1 | U190 | Phthalic anhydride | 85-44-9 |
| U165 | Naphthalene | 91-20-3 | U191 | 2-Picoline | 109-06-8 |
| U047 | Naphthalene, 2-chloro- | 91-58-7 | U179 | Piperidine, 1-nitroso- | 100-75-4 |
| U166 | 1,4-Naphthalenedione | 130-15-4 | U400 | Piperidine, 1,1'-(tetrathiodicarbonyl)-bis- | 120-54-7 |
| U236 | 2,7-Naphthalenedisulfonic acid, 3,3'-(3,3'-dimethyl (1,1'-biphenyl)-4,4'-diyl) bis(azo)bis(5-amino-4-hydroxy)-,tetrasodium salt | 72-57-1 | U383 | Potassium dimethyldithiocarbamate | 128-03-0 |
| U279 | 1-Naphthalenol, methylcarbamate | 63-25-2 | U378 | Potassium n-hydroxymethyl-n-methyl-di-thiocarbamate | 51026-28-9 |
| U166 | 1,4-Naphthoquinone | 130-15-4 | U377 | Potassium n-methyldithiocarbamate | 137-41-7 |
| U167 | alpha-Naphthylamine | 134-32-7 | U192 | Pronamide | 23950-58-5 |
| U168 | beta-Naphthylamine | 91-59-8 | U194 | 1-Propanamine (I,T) | 107-10-8 |
| U217 | Nitric acid, thallium(1+) salt | 10102-45-1 | U111 | 1-Propanamine, N-nitroso-N-propyl- | 621-64-7 |
| U169 | Nitrobenzene (I,T) | 98-95-3 | U110 | 1-Propanamine, N-propyl- (I) | 142-84-7 |
| U170 | p-Nitrophenol | 100-02-7 | U066 | Propane, 1,2-dibromo-3-chloro- | 96-12-8 |
| U171 | 2-Nitropropane (I,T) | 79-46-9 | U083 | Propane, 1,2-dichloro- | 78-87-5 |
| U172 | N-Nitrosodi-n-butylamine | 924-16-3 | U149 | Propanedinitrile | 109-77-3 |
| U173 | N-Nitrosodiethanolamine | 1116-54-7 | U171 | Propane, 2-nitro- (I,T) | 79-46-9 |
| U174 | N-Nitrosodiethylamine | 55-18-5 | U027 | Propane,2,2'-oxybis (2-chloro-1,3-Propane sulfone | 1120-71-4 |
| U176 | N-Nitroso-N-ethylurea | 759-73-9 | U193 | Propanoic acid, 2-(2,4,5-trichlorophenoxy)- | 93-72-1 |
| U177 | N-Nitroso-N-methylurea | 684-93-5 | See F027 | 1-Propanol,2,3-dibromo-, phosphate (3:1) | 126-72-7 |
| U178 | N-Nitroso-N-methylurethane | 615-53-2 | U140 | 1-Propanol, 2-methyl- (I,T) | 78-83-1 |
| U179 | N-Nitrosopiperidine | 100-75-4 | U002 | 2-Propanone (I) | 67-64-1 |
| U180 | N-Nitrosopyrrolidine | 930-55-2 | U007 | 2-Propenamide | 79-06-1 |
| U181 | 5-Nitro-o-toluidine | 99-55-8 | U084 | 1-Propene, 1,3-dichloro- | 542-75-6 |
| U193 | 1,2-Oxathiolane,2,2-dioxide | 1120-71-4 | U243 | 1-Propene, 1,1,2,3,3,3-hexachloro- | 1888-71-7 |
| U058 | 2H-1,3,2-Oxazaphosphorin-2-amine,N,N-bis(2-chloroethyl) tetrahydro-, 2-oxide | 50-18-0 | U009 | 2-Propenenitrile | 107-13-1 |
| U115 | Oxirane (I,T) | 75-21-8 | U152 | 2-Propenenitrile, 2-methyl- (I,T) | 126-98-7 |
| U126 | Oxiranecarboxaldehyde | 765-34-4 | U008 | 2-Propenoic acid (I) | 79-10-7 |
| U041 | Oxirane,(chloromethyl)- | 106-89-8 | U113 | 2-Propenoic acid, ethyl ester (I) | 140-88-5 |
| U182 | Paraldehyde | 123-63-7 | U118 | 2-Propenoic acid, 2-methyl-, ethyl ester | 97-63-2 |
| U391 | Pebulate | 1114-71-2 | U162 | 2-Propenoic acid, 2-methyl-, methyl ester (I,T) | 80-62-6 |
| U183 | Pentachlorobenzene | 608-93-5 | U373 | Propnam | 122-42-9 |
| U184 | Pentachloroethane | 76-01-7 | U411 | Propoxur | 114-26-1 |
| U185 | Pentachloronitrobenzene (PCNB) | 82-68-8 | U387 | Prosulfocarb | 5288-80-9 |
| See F027 | Pentachlorophenol | 87-86-5 | U194 | n-Propylamine (I,T) | 107-10-8 |
| U161 | Pentanol, 4-methyl- | 108-10-1 | U083 | Propylene dichloride | 78-87-5 |
| U186 | 1,3-Pentadiene (I) | 504-60-9 | U148 | 3,6-Pyridazinedione,1,2-dihydro- | 123-33-1 |
| U187 | Phenacetin | 62-44-2 | | | |
| U188 | Phenol | 108-95-2 | | | |

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| U196 | Pyridine | 110-86-1 | See F027 | 2,4,5-Trichlorophenol | 95-95-4 |
| U191 | Pyridine, 2-methyl- | 109-06-8 | See F027 | 2,4,6-Trichlorophenol | 88-06-2 |
| U237 | 2,4(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)- | 66-75-1 | U404 | Triethylamine | 121-44-8 |
| U164 | 4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo- | 56-04-2 | U234 | 1,3,5-Trinitrobenzene (R,T) | 99-35-4 |
| U180 | Pyrrolidine, 1-nitroso- | 930-55-2 | U182 | 1,3,5-Trioxane, 2,4,6-trimethyl- | 123-63-7 |
| U200 | Reserpine | 50-55-5 | U235 | Tris(2,3-dibromopropyl) phosphate | 126-72-7 |
| U201 | Resorcinol | 108-46-3 | U236 | Trypan blue | 72-57-1 |
| U202 | Saccharin, and salts | *81-07-2 | U237 | Uracil mustard | 66-75-1 |
| U203 | Safrole | 94-59-7 | U176 | Urea, N-ethyl-N-nitroso- | 759-73-9 |
| U204 | Selenious acid | 7783-00-8 | U177 | Urea, N-methyl-N-nitroso- | 684-93-5 |
| U204 | Selenium dioxide | 7783-00-8 | U385 | Vernolate | 1929-77-7 |
| U205 | Selenium sulfide | 7488-56-4 | U043 | Vinyl chloride | 75-01-4 |
| U205 | Selenium sulfide SeS ₂ (R,T) | 7488-56-4 | U248 | Warfarin, and salts, when present at concentrations of 0.3% or less | *81-81-2 |
| U376 | Selenium, tetrakis(dimethyl-dithiocarbamate) | 144-34-3 | U239 | Xylene (I) | 1330-20-7 |
| U015 | L-Serine, diazoacetate (ester) | 115-02-6 | U200 | Yohimban-16-carboxylic acid, 11, 17-dimethoxy-18((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)- | 50-55-5 |
| See F027 | Silvex (2,4,5,-TP) | 93-72-1 | U407 | Zinc, bis(diethylcarbamodithioato-S,S') | 14324-55-1 |
| U379 | Sodium dibutylthiocarbamate | 136-30-1 | U249 | Zinc phosphide Zn ₃ P ₂ , when present at concentrations of 10% or less | 1314-84-7 |
| U381 | Sodium diethylthiocarbamate | 148-18-5 | *CAS number given for parent compound only. | | |
| U382 | Sodium dimethylthiocarbamate | 128-04-1 | Section 5. Nerve and Blister Agents. The following substances are listed as hazardous wastes: | | |
| U206 | Streptozotocin | 18883-66-4 | | | |
| U103 | Sulfuric acid, dimethyl ester | 77-78-1 | | | |
| U277 | Sulfallate | 95-06-7 | | | |
| U189 | Sulfur phosphide (R) | 1314-80-3 | | | |
| See F027 | 2,4,5-T | 93-76-5 | | | |
| U402 | Tetrabutylthiuram disulfide | 1634-02-2 | | | |
| U207 | 1,2,4,5,-Tetrachlorobenzene | 95-94-3 | | | |
| U208 | 1,1,1,2-Tetrachloroethane | 630-20-6 | | | |
| U209 | 1,1,2,2-Tetrachloroethane | 79-34-5 | | | |
| U210 | Tetrachloroethylene | 127-18-4 | | | |
| See F027 | 2,3,4,6-Tetrachlorophenol | 58-90-2 | | | |
| U213 | Tetrahydrofuran (I) | 109-99-9 | | | |
| U401 | Tetramethylthiuram monosulfide | 97-74-5 | | | |
| U214 | Thallium (I) acetate | 563-68-8 | | | |
| U215 | Thallium (I) carbonate | 6533-73-9 | | | |
| U216 | Thallium (I) chloride | 7791-12-0 | | | |
| U216 | Thallium chloride TlCl | 7791-12-0 | | | |
| U217 | Thallium (I) nitrate | 10102-45-1 | | | |
| U366 | 2H-1,2,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl- | 533-74-4 | | | |
| U218 | Thioacetamide | 62-55-5 | | | |
| U410 | Thiodicarb | 59669-26-0 | | | |
| U153 | Thiomethanol (I,T) | 74-93-1 | | | |
| U244 | Thioperoxydicarbonic diamide ((H ₂ N)C(S)) ₂ S ₂ , tetramethyl- | 137-26-8 | | | |
| [U219] | Thiourea | 62-56-6 | | | |
| U244 | Thiram | 137-26-8 | | | |
| U402 | Thioperoxydicarbonic diamide, tetrabutyl | 1634-02-2 | | | |
| U403 | Thioperoxydicarbonic diamide, tetraethyl | 97-77-8 | | | |
| U409 | Thiophanate-methyl | 23564-05-8 | | | |
| U219 | Thiourea | 62-56-6 | | | |
| U244 | Thiram | 137-26-8 | | | |
| U220 | Toluene | 108-88-3 | | | |
| U221 | Toluenediamine | 25376-45-8 | | | |
| U223 | Toluene diisocyanate (R,T) | 26471-62-5 | | | |
| U328 | o-Toluidine | 95-53-4 | | | |
| U353 | p-Toluidine | 106-49-0 | | | |
| U222 | o-Toluidine hydrochloride | 636-21-5 | | | |
| U389 | Triallate | 2303-17-5 | | | |
| U011 | 1H-1,2,4-Triazol-3-amine | 61-82-5 | | | |
| U227 | 1,1,2-Trichloroethane | 79-00-5 | | | |
| U228 | Trichloroethylene | 79-01-6 | | | |
| U121 | Trichloromonofluoromethane | 75-69-4 | | | |

Section 5. Nerve and Blister Agents. The following substances are listed as hazardous wastes:

| Kentucky Waste Number | Substance | Chemical Abstracts Number |
|-----------------------|---|---------------------------|
| N001 | GB (isopropyl methyl phosphonofluoridate) (H) | 107-44-8 |
| N002 | VX (O-ethyl-S-(2-diisopropyl-aminoethyl)-methyl phosphonothiolate) (ri) | 50782-69-9 |
| N003 | H (bis(2-chloroethyl) sulfide) and related compounds (H) | 505-60-2 |

Section 6. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement. (1) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives shall not meet the listing definition of F032 once the generator has met all of the requirements of subsections (2) and (3) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one (1) or more of the hazardous waste characteristics.

(2) Generators shall either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(a) Generators shall do one (1) of the following:

1. Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;
2. Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or
3. Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic

preservations.

(b) Cleaning requirements.

1. Generators shall prepare and sign a written equipment cleaning plan that describes:

- a. The equipment to be cleaned;
- b. How the equipment will be cleaned;
- c. The solvent to be used in cleaning;
- d. How solvent rinses will be tested; and
- e. How cleaning residues will be disposed.

2. Equipment shall be cleaned as follows:

- a. Remove all visible residues from process equipment;
- b. Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

3. Analytical requirements.

[a-] Rinses shall be tested in accordance with SW-846, Method 8290, incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010.

[b- "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1-]

4. The generator shall manage all residues from the cleaning process as F032 waste.

(c) Replacement requirements.

1. Generators shall prepare and sign a written equipment replacement plan that describes:

- a. The equipment to be replaced;
- b. How the equipment will be replaced; and
- c. How the equipment will be disposed.

2. The generator shall manage the discarded equipment as F032 waste.

(d) Documentation requirements. Generators shall document that previous equipment cleaning or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(3) The generator shall maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

- (a) The name and address of the facility;
- (b) Formulations previously used and the date on which their use ceased in each process at the plant;
- (c) Formulations currently used in each process at the plant;
- (d) The equipment cleaning or replacement plan;
- (e) The name and address of any persons who conducted the cleaning and replacement;
- (f) The dates on which cleaning and replacement were accomplished;
- (g) The dates of sampling and testing;
- (h) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;
- (i) A description of the tests performed, the date the tests were performed, and the results of the tests;
- (j) The name and model numbers of the instrument(s) used in performing the tests;
- (k) QA/QC documentation; and
- (l) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under Section 6 of 401 KAR 31:040 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Manage-

ment, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This proposed amendments affect owners and operators of hazardous waste facilities dealing with organic chemicals, and coking.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There will be no additional costs in adopting these amendments. However, the cabinet will have increased workloads in order to process all new entities that will be regulated by the amendments of this regulation. The only savings will be from any EPA grants received by having this amendment meeting their standards.

2. Continuing costs or savings: No additional costs or savings will occur after all new entities are processed.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: The amendments made will require no new paperwork or reporting burden.

4. Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenue from the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Partial funding from EPA grants are anticipated to pay increased costs due to increased work in the implementation of and enforcement of these standards.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: No alternative changes were considered. These amendments were changed to meet federal standards.

8. Assessment of expected benefits of the administrative regulation: Kentucky industries will receive indirect savings from the adoption of these amendments.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The effects on public health and environmental welfare will improve with the adoption and implementation of these amendments.

b. State whether a detrimental effect on the environment and public health would result if not implemented: There are no detrimental effects.

c. If detrimental effect would result, explain detrimental effect: There are no detrimental effects.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or policies that conflict with, overlap, or duplicate the proposed amendment.

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

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

11. Any additional information or comments: There are no additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was used based on the amount of chemicals generated, consistent with federal standards, 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 for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that include the identification of hazardous wastes. These changes are necessary to maintain consistency between the state and federal programs. A variety of additions and a few exclusions have been made to clarify the hazardous waste list. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that is the owner or operator of any hazardous waste facility that deals with organic chemicals or coking.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies that own or operate hazardous waste facilities that deal with organic chemicals or coking will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to

compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 31:060. Rulemaking petitions for hazardous waste.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.50, 224.99, 40 CFR 260 Subpart C

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3)

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-510(3) and to establish the procedures to add a testing or analytical method to 401 KAR Chapters 31, 34, or 35 or to exclude a waste at a particular site or facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040. This administrative regulation is equivalent to federal standards established in 40 CFR Part 260.20 through 260.23 except for: Section 1(2)(e) of this administrative regulation, which requires persons requesting to delist a hazardous waste to submit a fee as provided in KRS 224.46-014; Section 3 of this administrative regulation, which was added to clarify that delisted waste is subject to solid waste requirements; Section 4 of this administrative regulation, which was added to allow the cabinet to repeal a delisting if it is found that the submitted information was erroneous or fraudulent; and Section 5 of this administrative regulation, which was added to clarify requirements for delisting approval.

Section 1. General Procedures. (1) Any person may petition the cabinet to modify or revoke any provision in 401 KAR Chapters 30 through 38, and 43. This administrative regulation sets forth requirements for petitions to add a testing or analytical method to 401 KAR Chapters 31, 34, or 35 ~~[30 through 37]~~ ~~[31, 34, or 35]~~ or to exclude a waste or waste-derived material at a particular facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040. Section 7 of this administrative regulation sets forth additional requirements for petitions to amend 401 KAR Chapter 43 to include additional hazardous wastes or categories of hazardous wastes as a universal waste.

(2) Each petition shall be submitted to the cabinet by certified mail and shall include:

- (a) The petitioner's name and address;
- (b) A statement of the petitioner's interest in the proposed action;
- (c) A description of the proposed action, including (where appropriate) suggested regulatory language;
- (d) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information; and

(e) A check payable to the Kentucky State Treasurer in the amount required by 401 KAR Chapter 39.

(3) The cabinet shall make a tentative decision to grant or deny a petition. If the tentative decision is to deny, the cabinet shall notify the petitioner. If the tentative decision is to grant the petition, the cabinet shall propose an amendment to 401 KAR 31:070, and file the proposed amendment with the Legislative Research Commission pursuant to KRS Chapter 13A.

Section 2. Petitions to Amend 401 KAR Chapter 31 to Exclude a Waste Produced at a Particular Facility. (1) Any person seeking to exclude a waste at a particular generating facility from the lists in 401

KAR 31:040 may petition for an amendment to the administrative regulation under this section and Section 1 of this administrative regulation. To be successful:

(a) The petitioner shall demonstrate to the satisfaction of the cabinet that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste or an acutely hazardous waste; and

(b) Based on a complete application the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed will cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(2) The procedures in this section and Section 1 of this administrative regulation may also be used to petition the cabinet for a regulatory amendment to exclude from Section 3(1)(b)2 or (3) of 401 KAR 31:010, a waste which is described in these subsections and is either a waste listed in 401 KAR 31:040, or is derived from a waste listed in 401 KAR 31:040. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner shall make the same demonstration as required by subsection (1) of this section. Where the waste is a mixture of solid waste and one (1) or more listed hazardous wastes or is derived from one (1) or more hazardous wastes, his demonstration shall be made with respect to the waste mixture as a whole; analysis shall be conducted for not only those constituents of the listed waste(s) contained within the mixture but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste in accordance with 401 KAR 31:030.

(3) If the waste is listed with codes "I," "C," "R," or "E" in 401 KAR 31:040:

(a) The petitioner shall show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in Sections 2, 3, 4, or 5 of 401 KAR 31:030 using any applicable methods prescribed therein. The petitioner also shall show that the waste does not exhibit any of the other characteristics defined in Sections 2, 3, 4, or 5 of 401 KAR 31:030 using any applicable methods prescribed therein; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed shall cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(4) If the waste is listed with code "T" in 401 KAR 31:040:

(a) The petitioner shall demonstrate that the waste:

1. Does not contain the constituent or constituents (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, using the appropriate test methods prescribed in 401 KAR 31:120; or

2. Although containing one (1) or more of the hazardous constituents (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, does not meet the criterion of 40 CFR 261.11(a)(3), ~~[(4999)]~~ when considering the factors used by the cabinet in 40 CFR 261.11(a)(3)(i) to (xi), ~~[(4999)]~~ under which the waste was listed as hazardous; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(c) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections 2, 3, 4 and 5 of 401 KAR 31:030 using any applicable methods prescribed therein;

(d) A waste which is so excluded, however, still may be a

hazardous waste by operation of 401 KAR 31:030.

(5) If the waste is listed with the code "H" in 401 KAR 31:040:

(a) The petitioner shall demonstrate that the waste does not meet criterion of subsection (1)(b) of 401 KAR 31:020; and

(b) Based on a complete application, the cabinet shall determine, where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed will cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(c) The petitioner shall demonstrate that the waste does not exhibit any of the characteristics defined in Sections 2, 3, 4, and 5 of 401 KAR 31:030 using any applicable methods prescribed therein;

(d) A waste which is so excluded, however, still may be a hazardous waste by operation of 401 KAR 31:030.

(6) Demonstration samples shall consist of enough representative samples, but in no case less than four (4) samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(7) Each petition shall include, in addition to the information required by Section 1(2) of this administrative regulation:

(a) The name and address of the laboratory facility performing the sampling or tests of the waste;

(b) The names and qualifications of the persons sampling and testing the waste;

(c) The dates of sampling and testing;

(d) The location of the generating facility;

(e) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(f) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(g) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in Section 2(1)(c) of 401 KAR 31:020;

(h) A description of the methodologies and equipment used to obtain the representative samples;

(i) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

(j) A description of the tests performed (including results);

(k) The names and model numbers of the instruments used in performing the tests; and

(l) The following statement signed by the generator of the waste or his authorized representative:

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

(8) After receiving a petition for an exclusion, the cabinet may request any additional information which the cabinet may reasonably require to evaluate the petition.

(9) An exclusion shall only apply to the waste generated at the individual facility covered by the demonstration and shall not apply to waste from any other facility.

(10) The cabinet may exclude only the part of the waste for which the demonstration is submitted where the cabinet has reason to believe that variability of the waste justifies a partial exclusion.

Section 3. Requirements for Excluded Wastes. Upon approval by the cabinet of a petition to exclude waste from a particular facility, the

excluded waste shall thereby be listed as a solid waste and be subject to the requirements for solid waste disposal in 401 KAR Chapter 47 and the conditions as specified in the approved exclusion.

Section 4. Repeal or Modification of an Exclusion. The cabinet shall repeal or modify an exclusion granted to any generator or petitioner for a waste or to any generator or petitioner for an equivalent testing or analytical method whenever:

(1) The cabinet has obtained information, which was not available at the time the petition for exclusion was granted, which leads the cabinet to believe that reasonable probability exists that the waste:

(a) Was erroneously excluded from administrative regulation in accordance with Section 2 of this administrative regulation;

(b) Shall be regulated as a hazardous waste because it contains a hazardous constituent which was listed as a hazardous waste subsequent to approval of a petition to delist the waste at a particular facility; or

(c) Shall be regulated as a hazardous waste because new studies or analysis have been performed which indicate the waste meets the definition of a hazardous waste in KRS 224.01-010.

(2) The cabinet has obtained information, which was not available at the time the petition for an equivalent testing or analytical method was granted, which leaves the cabinet to believe that reasonable probability exists that the equivalent testing or analytical method was erroneously approved in accordance with Section 6 of this administrative regulation.

(3) The cabinet has obtained information that a petition for an exclusion or an equivalent testing or analytical method was incomplete, inaccurate, or based on erroneous data or calculations.

(4) The cabinet has obtained information from any other agency of state or federal government, including the EPA, that the waste shall be regulated as a hazardous waste consistent with the Resource Conservation and Recovery Act (PL 94-580), as amended (including PL 98-616, the 1984 Hazardous and Solid Waste Amendments), and pursuant to KRS Chapter 224.

(5) The cabinet has obtained information from any other agency of a state or the federal government, including the EPA, that the testing or analytical method is not equal to or superior to the corresponding method prescribed in 401 KAR Chapter 31, 34, 35, or 37 in terms of its sensitivity, accuracy, and precision.

Section 5. Requirements for Approval. In accordance with Section 3 of 401 KAR 30:020, the cabinet shall not approve a petition to exclude a waste at a particular facility unless:

(1) Exclusion of the waste is consistent with the requirements in KRS 224.46-510(3);

(2) Petitioning fees have been paid in accordance with 401 KAR 39:020; and

(3) All the requirements of this administrative regulation are satisfied.

Section 6. Petitions for Equivalent Testing or Analytical Methods.

(1) Any person seeking to add a testing or analytical method to 401 KAR Chapter 31, 34, 35, or 37 may petition for a regulatory amendment under this section and Section 1 of this administrative regulation. To be successful, the person shall demonstrate to the satisfaction of the cabinet that the proposed method is equal to or superior to the corresponding method prescribed in 401 KAR Chapter 31, 34, 35, or 37 in terms of its sensitivity, accuracy, and precision (reproducibility).

(2) Each petition shall include, in addition to the information required by Section 1(2) of this administrative regulation:

(a) A full description of the proposed method, including all procedural steps and equipment used in the method;

(b) A description of the types of wastes or waste matrices for which the proposed method may be used;

(c) Comparative results obtained from using the proposed method

with those obtained from using the relevant or corresponding methods prescribed in 401 KAR Chapter 31, 34, 35, or 37;

(d) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(e) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(3) After receiving a petition for an equivalent method, the cabinet may request any additional information on the proposed method which is reasonably required to evaluate the method.

(4) If the cabinet amends the hazardous waste administrative regulations to permit use of a new testing method, the method shall be referenced in Section 3 of 401 KAR 30:010.

Section 7. Petitions to Amend 401 KAR Chapter 43 to Include Additional Hazardous Wastes. (1) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of 401 KAR Chapter 43 shall petition for a regulatory amendment under Section 1 of this administrative regulation and 401 KAR 43:070.

(2)(a) The petitioner shall demonstrate to the satisfaction of the cabinet that regulation under the universal waste regulations of 401 KAR Chapter 43:

1. Is appropriate for the waste or category of waste;

2. Will improve management practices for the waste or category of waste; and

3. Will improve implementation of the hazardous waste program.

(b) The petition shall include the information required by Section 1(2) of this administrative regulation.

(c) The petition shall also address as many of the factors listed in Section 2 of 401 KAR 43:070 as are appropriate for the waste or category of waste addressed in the petition.

(3) The cabinet shall grant or deny the petition using the factors listed in Section 2 of 401 KAR 43:070. The decision shall be based on the weight of evidence showing that regulation under 401 KAR Chapter 43 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(4) The cabinet may request additional information needed to evaluate the merits of the petition.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This proposed amendment affects generators of hazardous waste that wish to include additional waste as universal waste.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

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1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The combined effect of adopting the federal standards will result in an increased workload on existing staff. Partial funding via EPA is anticipated to cover extra costs associated with the extra workload.

2. Continuing costs or savings: Until the processing is complete for all entities, there will be an increased workload for those in the agency.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs, because the changes are consistent with federal standards.

b. Reporting and paperwork requirements: There will be more paperwork, since additional petitions may be submitted requesting the cabinet to include additional hazardous waste as a universal waste.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Partial funding from EPA grants are anticipated to help in the enforcement and implementation of these standards.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. These changed are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: There will be some benefits for Kentucky industries because they will receive indirect savings with the adoption of these amendments.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The effects on public health and the environment will improve with the adoption and implementation of these amendments.

b. State whether a detrimental effect on the environment and public health would result if not implemented: If not implemented, the environment and public health would not be threatened. c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict with, overlap, or duplicate the proposed amendment.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was used. This administrative regulation allows an entity to request that a hazardous waste be considered as a universal waste, which is subject to fewer requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air

pollution.

2. State compliance standards: The proposed amendments adopt changes that include standards for hazardous waste facilities that are to be included as universal waste. These changes are necessary to maintain consistency between the state and federal programs. Additions have been made which clarify the applicability of technical standards to hazardous waste facilities. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that generates hazardous waste that wishes to include additional waste as universal waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 32:005. Definitions related to 401 KAR Chapter 32.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10
STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: This chapter implements provisions of KRS 224.46-510 and establishes the general provisions applicable to generators of hazardous waste. This administrative regulation defines essential terms that are used in this chapter. The majority of terms defined in this administrative

regulation are equivalent to federal terms contained in 40 CFR Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 32 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfill and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste

resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "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.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a) 1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the

combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "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.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "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.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; or ~~and~~

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" 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, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "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.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action require-

ments under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure ~~and postclosure~~ cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) ~~"Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).~~

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(59) ~~(60)~~ "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(60) ~~(61)~~ "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(61) ~~(62)~~ "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266; and

(d) That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(62) ~~(63)~~ "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63) ~~(64)~~ "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(64) ~~(65)~~ "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65) ~~(66)~~ "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 (for example, transport vehicle) and a boiler or industrial furnace.

(66) **"Disposal" shall have the meaning specified in KRS 224.01-010.**

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) ~~"Disposal" shall have the meaning specified in KRS 224.01-010.~~

(69) ~~(70)~~ "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.

(69) ~~(70)~~ "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.

(70) ~~(71)~~ "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(71) ~~(72)~~ "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.

(72) ~~(73)~~ "Draft permit" shall have the same meaning as "proposed permit".

(73) ~~(74)~~ "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(74) ~~(75)~~ "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(75) ~~(76)~~ "Elementary neutralization unit" means a device which:
(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(76) ~~(77)~~ "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(77) [(78)] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(78) [(79)] "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(79) [(80)] "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) [(81)] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) [(82)] "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(82) [(83)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(83) [(84)] "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 401 KAR 34:275. [this administrative regulation.]

(84) [(85)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85) [(86)] "Existing" 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.

(86) [(87)] "Existing component" shall have the same meaning as "existing tank system."

(87) [(88)] "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) [(89)] "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:
1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(89) [(90)] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(90) [(91)] "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation 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 site or installation of the tank system to be completed within a reasonable time.

(91) [(92)] "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(92) [(93)] "Face amount" means the total amount the insurer is obligated to pay under the policy.

(93) [(94)] "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example [e-g-], one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(94) "Facility mailing list" means the mailing list for a facility maintained in accordance with Section 7(3)(a)4c of 401 KAR 38:050.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "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.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "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.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) ~~"Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.~~

~~[(114)] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.~~

(114) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

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

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01-010.

(117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

(118) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(119) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

~~[(118)] "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.~~

~~[(119)] "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit for use tank system.]~~

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impound-

ment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(122) "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.

(123) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(124) ~~[(122)]~~ "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

~~[(123)] "Hazardous waste" shall have the meaning specified in KRS 224.01-010.]~~

(125) ~~[(124)]~~ "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) ~~[(125)]~~ "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(127) ~~[(126)]~~ "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) ~~[(127)]~~ "In existence" shall have the same meaning as "existing."

(129) ~~[(128)]~~ "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) ~~[(129)]~~ "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) ~~[(130)]~~ "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.

(132) ~~[(131)]~~ "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) ~~[(132)]~~ "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) ~~[(133)]~~ "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient

pressure.

(135) [(134)] "In vapor service" shall have the same meaning as "in gas service".

(136) [(135)] "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) [(136)] "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(138) [(137)] "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) [(138)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) [(139)] "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) [(140)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(142) [(141)] "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (a) Cement kilns;
- (b) Lime kilns;
- (c) Aggregate kilns;
- (d) Phosphate kilns;
- (e) Coke ovens;
- (f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulp liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(143) [(142)] "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(144) [(143)] "Injection well" means a well into which fluids are

injected to achieve subsurface emplacement.

(145) [(144)] "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(146) [(145)] "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(147) [(146)] "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(148) [(147)] "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(149) [(148)] "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(150) [(149)] "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

[(150) "IUC well" means a underground injection control well as provided in 40 CFR Part 144.]

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(158) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

[(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.]

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats,

calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "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.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "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.

(169) **"Manifest" shall have the meaning specified in KRS 224.01-010.**

(170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

~~[(170) "Manifest" shall have the meaning specified in KRS 224.01-010.]~~

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is

stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) **"Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.**

(175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

~~[(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.]~~

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) **"New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.**

(180) "New tank component" shall have the same meaning as "new tank system."

(181) ~~[(180)]~~ "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

~~[(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.]~~

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

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(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "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.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

~~[(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.]~~

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for hazardous [solid] waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in 401 KAR Chapter 31 [40 CFR Part 264].

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

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

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

- (219) "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.
- (220) "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.
- (221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.
- (222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.
- (223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.
- (224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.
- (225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.
- (226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).
- (227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.
- (228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.
- (229) "Recovered material" shall have the meaning specified in KRS 224.01-010.
- (230) "Recyclable materials" means hazardous wastes that are recycled.
- (231) "Recycled" means a material that is used, reused, or reclaimed.
- (232) "Recycling" shall have the meaning specified in KRS 224.01-010.
- (233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.
- (234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.
- (235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.
- (236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.
- (237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.
- (238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.
- (239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes 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 through 36.
- (240) "Resource recovery" means the recovery of material or energy from waste.
- (241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.
- (242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.
- (243) "Saturated zone" shall have the same meaning as "zone of saturation".
- (244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.
- (245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.
- (246) "Secretary" shall have the meaning specified in KRS 224.01-010.
- (247) "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.
- (248) "Separator tank" means a device used for separation of two immiscible liquids.
- (249) "Sewage system" shall have the meaning specified in KRS 224.01-010.
- (250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.
- (251) **"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.**
- (252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.
- ~~[(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.]~~
- (253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.
- (254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.
- (255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which

solid wastes have been routinely and systematically released.

(256) "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.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "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.

(264) **"Storage" shall have the meaning specified in KRS 224.01-010.**

(265) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(266) ~~[(265)]~~ "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

~~[(266) "Storage" shall have the meaning specified in KRS 224.01-010.]~~

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "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.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) **"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").**

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

~~[(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").]~~

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs 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.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;

2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment" shall have the meaning specified in KRS 224.01-010.

(288) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(289) [(288)] "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

[(289)] "Treatment" shall have the meaning specified in KRS 224.01-010.]

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 CFR Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(293) [(292)] "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(294) [(293)] "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) [(294)] "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) [(295)] "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

(d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) [(296)] "Universal waste handler":

(a) Means:

1. A generator of universal waste; or
2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a

foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) [(297)] "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) [(298)] "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) [(299)] "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) [(300)] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302) [(301)] "Used oil" shall have the same meaning as KRS 224.50-545.

(303) [(302)] "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) [(303)] "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.

(305) [(304)] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) [(305)] "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) [(306)] "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.

(308) [(307)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) [(308)] "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) [(309)] "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" shall have the meaning specified in KRS 224.01-010.

(312) [(310)] "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) [(311)] "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314) [(312)] "Waste pile" shall have the same meaning as "pile".

(315) [(313)] "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010) [Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference refer to § 260.11 of this chapter)]. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

[(314)] "Waste" shall have the meaning specified in KRS 224.01-010.]

(316) [(315)] "Wastewaters" means 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:

(a) 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 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

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

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

(317) [(316)] "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) [(317)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel

without containers or labels.

[(318)] "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.]

(320) [(319)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(321) [(320)] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(322) [(321)] "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) [(322)] "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) [(323)] "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| Am. | Amended |
|-----------------|---|
| C | Corrosive waste |
| CAA | Clean Air Act, as amended |
| CFR | Code of Federal Regulations |
| cm | Centimeter |
| cm ² | Centimeter squared |
| CO | Carbon monoxide |
| CO ₂ | Carbon dioxide |
| CWA | Clean Water Act, as amended |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| DOT | United States Department of Transportation |
| DRE | Destruction and removal efficiency |
| E | Explosive waste |
| eff. | Effective |
| EPA | United States Environmental Protection Agency |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FIA | Federal Insurance Administration |
| FR | Federal Register |
| H | Acutely hazardous waste |
| ha | Hectare |
| HTMR | High temperature metals recovery |
| HSWA | Hazardous and Solid Waste Amendments of 1994 |
| I | Ignitable waste |
| KAR | Kentucky Administrative Regulation |
| kg | Kilogram |
| KPDES | Kentucky Pollution Discharge Elimination System |
| KRS | Kentucky Revised Statute |
| Ky.R. | Administrative Register of Kentucky |
| l | Liter |
| LC | Lethal concentration |
| LD | Lethal dose |
| ml | Milliliter |
| mm | Millimeter |
| N | Normal |

ADMINISTRATIVE REGISTER - 2002

| | |
|-------------|---|
| NESHAPS | National Emissions Standards for Hazardous Air Pollutants |
| NPDES | National Pollutant and Discharge Elimination System |
| PCB | Polychlorinated biphenyl |
| pCi/l | Picocuries per liter |
| PHC | Principal hazardous constituent |
| Permit POHC | Permitted principal organic hazardous constituent |
| PM | Particulate matter |
| POHC | Principal organic hazardous constituent |
| ppm | parts per million |
| Trial POHC | Trial burn principal organic hazardous constituent |
| POTW | Publicly owned treatment works |
| PSD | Prevention of significant deterioration |
| psi | Pounds per square inch |
| psig | Pounds per square inch gauge |
| R | Reactive waste |
| RCRA | Resource Conservation and Recovery Act, as amended |
| SDWA | Safe Drinking Water Act, as amended |
| SEC | Securities and Exchange Commission |
| SIC | Standard Industrial Classification Code |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |
| T | Toxic waste |
| UIC | Underground Injection Control |
| UICP | Underground Injection Control Program |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| USGS | United States Geological Survey |
| USPS | United States Postal Service |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 32. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 32, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

401 KAR 33:005. Definitions related to 401 KAR Chapter 33.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10
STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510 requires the cabinet to promulgate administrative regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with a manifest system. The chapter establishes standards for transporters of hazardous waste. This administrative regulation defines essential terms that are used in this chapter. The majority of terms defined in this administrative regulation are equivalent to federal terms contained in 40 CFR Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 33 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding

surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfill and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "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.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters

30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the

preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "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.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "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.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; ~~or~~ **and**

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" 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, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste

is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "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.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure [and postclosure] cost estimates" means the

most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) ~~["Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).~~

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(59) ~~(60)~~ "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(60) ~~(61)~~ "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(61) ~~(62)~~ "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266; and

(d) That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(62) ~~(63)~~ "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63) ~~(64)~~ "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(64) ~~(65)~~ "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65) ~~(66)~~ "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 (for example, transport vehicle) and a boiler or industrial furnace.

(66) "Disposal" shall have the meaning specified in KRS

224.01-010.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) ~~["Disposal"] shall have the meaning specified in KRS 224.01-010.~~

~~(69)~~ "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.

~~(69)~~ ~~[(70)]~~ "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.

~~(70)~~ ~~[(71)]~~ "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

~~(71)~~ ~~[(72)]~~ "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.

~~(72)~~ ~~[(73)]~~ "Draft permit" shall have the same meaning as "proposed permit".

~~(73)~~ ~~[(74)]~~ "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

~~(74)~~ ~~[(75)]~~ "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

~~(75)~~ ~~[(76)]~~ "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

~~(76)~~ ~~[(77)]~~ "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

~~(77)~~ ~~[(78)]~~ "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

~~(78)~~ ~~[(79)]~~ "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

~~(79)~~ ~~[(80)]~~ "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

~~(80)~~ ~~[(81)]~~ "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

~~(81)~~ ~~[(82)]~~ "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

~~(82)~~ ~~[(83)]~~ "Ephemeral stream" means a stream which flows only

in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

~~(83)~~ ~~[(84)]~~ "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 **401 KAR 34:275**. ~~[this administrative regulation.]~~

~~(84)~~ ~~[(85)]~~ "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

~~(85)~~ ~~[(86)]~~ "Existing" 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.

~~(86)~~ ~~[(87)]~~ "Existing component" shall have the same meaning as "existing tank system."

~~(87)~~ ~~[(88)]~~ "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

~~(88)~~ ~~[(89)]~~ "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

~~(89)~~ ~~[(90)]~~ "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

~~(90)~~ ~~[(91)]~~ "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation 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 site or installation of the tank system to be completed within a reasonable time.

~~(91)~~ ~~[(92)]~~ "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

~~(92)~~ ~~[(93)]~~ "Face amount" means the total amount the insurer is obligated to pay under the policy.

~~(93)~~ ~~[(94)]~~ "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (**for example** ~~[(94)]~~, one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(94) "Facility mailing list" means the mailing list for a facility maintained in accordance with Section 7(3)(a)4c of 401 KAR 38:050.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "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.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "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.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

~~(113) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.~~

~~(114)~~ "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

~~(114) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.~~

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

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01-010.

(117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

(118) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(119) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

~~[(118) "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.~~

~~(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit for use tank system.]~~

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(122) "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.

(123) "Hazardous waste site or facility" means any place at which

hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(124) [(+22)] "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

[(+23)] "Hazardous waste" shall have the meaning specified in KRS 224.01-010.]

(125) [(+24)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) [(+25)] "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(127) [(+26)] "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) [(+27)] "In existence" shall have the same meaning as "existing."

(129) [(+28)] "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) [(+29)] "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) [(+30)] "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.

(132) [(+31)] "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) [(+32)] "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) [(+33)] "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(135) [(+34)] "In vapor service" shall have the same meaning as "in gas service".

(136) [(+35)] "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) [(+36)] "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(138) [(+37)] "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) [(+38)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials,

or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) [(+39)] "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) [(+40)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(142) [(+41)] "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulp liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(143) [(+42)] "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(144) [(+43)] "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(145) [(+44)] "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(146) [(+45)] "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(147) [(+46)] "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(148) [(+47)] "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(149) [(+48)] "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(150) [(149)] "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

[(160)] "IUC well" means a underground injection control well as provided in 40 CFR Part 144.

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(158) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

[(159)] "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.]

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the

terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "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.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "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.

(169) "Manifest" shall have the meaning specified in KRS 224.01-010.

(170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

[(170)] "Manifest" shall have the meaning specified in KRS 224.01-010.]

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

[(175)] "Monitoring" means the act of systematically inspecting and

collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.]

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) **"New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.**

~~(180)~~ "New tank component" shall have the same meaning as "new tank system."

~~(181) [(180)]~~ "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

~~[(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.]~~

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "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.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility

or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) **"Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.**

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

~~[(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.]~~

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCa section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCa section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for hazardous [solid] waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in 401 KAR Chapter 31 [40 CFR Part 261].

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

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

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "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.

(220) "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.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation

level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes 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 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial

measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "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.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) **"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.**

(252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

~~[(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.]~~

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "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.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "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.

(264) **"Storage" shall have the meaning specified in KRS 224.01-010.**

(265) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(266) ~~[(265)]~~ "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

~~[(266) "Storage" shall have the meaning specified in KRS 224.01-010.]~~

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "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.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) **"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of**

thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

~~[(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").]~~

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs 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.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;

4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment" shall have the meaning specified in KRS 224.01-010.

(288) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to

transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

~~(289) [(288)]~~ "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

~~[(289) "Treatment" shall have the meaning specified in KRS 224.01-010.]~~

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 CFR Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(293) ~~[(292)]~~ "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(294) ~~[(293)]~~ "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) ~~[(294)]~~ "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) ~~[(295)]~~ "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

- (d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) ~~[(296)]~~ "Universal waste handler":

(a) Means:

1. A generator of universal waste; or
2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) ~~[(297)]~~ "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) ~~[(298)]~~ "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) ~~[(299)]~~ "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) ~~[(300)]~~ "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower

aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302) [(304)] "Used oil" shall have the same meaning as KRS 224.50-545.

(303) [(302)] "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) [(303)] "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.

(305) [(304)] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) [(305)] "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) [(306)] "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.

(308) [(307)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) [(308)] "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) [(309)] "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" shall have the meaning specified in KRS 224.01-010.

(312) [(310)] "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) [(311)] "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applica-

ble standards.

(314) [(312)] "Waste pile" shall have the same meaning as "pile".

(315) [(313)] "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010) [Third Edition, September 1986, as amended by Update I, November 16, 1992 (incorporated by reference refer to § 260.11 of this chapter)]. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

[(314)] "Waste" shall have the meaning specified in KRS 224.01-010.]

(316) [(315)] "Wastewaters" means 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:

(a) 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 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

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

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

(317) [(316)] "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) [(317)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

[(318)] "Water" or "Waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.]

(320) [(318)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(321) [(319)] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(322) [(320)] "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) [(321)] "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) [(322)] "Zone of saturation" means that part of the earth's

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crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| | |
|-----------------|---|
| Am. | Amended |
| C | Corrosive waste |
| CAA | Clean Air Act, as amended |
| CFR | Code of Federal Regulations |
| cm | Centimeter |
| cm ² | Centimeter squared |
| CO | Carbon monoxide |
| CO ₂ | Carbon dioxide |
| CWA | Clean Water Act, as amended |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| DOT | United States Department of Transportation |
| DRE | Destruction and removal efficiency |
| E | Explosive waste |
| eff. | Effective |
| EPA | United States Environmental Protection Agency |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FIA | Federal Insurance Administration |
| FR | Federal Register |
| H | Acutely hazardous waste |
| ha | Hectare |
| HTMR | High temperature metals recovery |
| HSWA | Hazardous and Solid Waste Amendments of 1994 |
| I | Ignitable waste |
| KAR | Kentucky Administrative Regulation |
| kg | Kilogram |
| KPDES | Kentucky Pollution Discharge Elimination System |
| KRS | Kentucky Revised Statute |
| Ky.R. | Administrative Register of Kentucky |
| L | Liter |
| LC | Lethal concentration |
| LD | Lethal dose |
| ml | Milliliter |
| mm | Millimeter |
| N | Normal |
| NESHAPS | National Emissions Standards for Hazardous Air Pollutants |
| NPDES | National Pollutant and Discharge Elimination System |
| PCB | Polychlorinated biphenyl |
| pCi/l | Picocuries per liter |
| PHC | Principal hazardous constituent |
| Permit POHC | Permitted principal organic hazardous constituent |
| PM | Particulate matter |
| POHC | Principal organic hazardous constituent |
| ppm | parts per million |
| Trial POHC | Trial burn principal organic hazardous constituent |
| POTW | Publicly owned treatment works |
| PSD | Prevention of significant deterioration |
| psi | Pounds per square inch |
| psig | Pounds per square inch gauge |
| R | Reactive waste |
| RCRA | Resource Conservation and Recovery Act, as amended |
| SDWA | Safe Drinking Water Act, as amended |

| | |
|----------|---|
| SEC | Securities and Exchange Commission |
| SIC | Standard Industrial Classification Code |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |
| T | Toxic waste |
| UIC | Underground Injection Control |
| UICP | Underground Injection Control Program |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| USGS | United States Geological Survey |
| USPS | United States Postal Service |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives.

8. Assessment of expected benefits of the administrative

regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that are hazardous waste transporters.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 33. These terms are assimilated from existing federal and state regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 33, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

401 KAR 34:005. Definitions related to 401 KAR Chapter 34.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10, 264.141, 264.1031, 264.1051, 264.1081

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

NECESSITY, FUNCTION, AND CONFORMITY: This chapter establishes standards for new hazardous waste sites or facilities, as required by KRS 224.46-520 and 224.46-530. This administrative regulation defines essential terms that are used in this chapter. The majority of terms defined in this administrative regulation are equivalent to federal terms contained in 40 CFR Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 34 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same

type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "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.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO

concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a) 1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "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.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

- (31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.
- (32) "Certificate" shall have the meaning specified in KRS 224.46-810.
- (33) "Certification" means a statement of professional opinion based upon knowledge and belief.
- (34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.
- (35) "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.
- (36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.
- (37) "Closure" shall have the meaning specified in KRS 224.01-010.
- (38) "Component" means either the tank or ancillary equipment of a tank system.
- (39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.
- (40) "Conditionally exempt small quantity generator" means:
- (a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; or ~~and~~
 - (b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.
- (41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.
- (42) "Connector" 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, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.
- (43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.
- (44) "Constituent" shall have the same meaning as "hazardous waste constituent."
- (45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.
- (46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.
- (47) "Contaminate" means introduce a substance that would cause:
- (a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;
 - (b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or
- (c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.
- (48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.
- (49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.
- (50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.
- (51) "Control device shutdown" means the cessation of operation of a control device for any purpose.
- (52) "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.
- (53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.
- (54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.
- (55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.
- (56) "Current closure ~~and postclosure~~ cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.
- (57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.
- (58) ~~["Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).~~
- ~~(59)~~ "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).
- ~~(59)~~ ~~[(60)]~~ "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.
- ~~(60)~~ ~~[(61)]~~ "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However,

the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(61) [(62)] "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266; and

(d) That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(62) [(63)] "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63) [(64)] "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(64) [(65)] "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65) [(66)] "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 (for example, transport vehicle) and a boiler or industrial furnace.

(66) "Disposal" shall have the meaning specified in KRS 224.01-010.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) ["Disposal" shall have the meaning specified in KRS 224.01-010.]

(69) "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.

(69) [(70)] "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.

(70) [(71)] "Domestic sewage" means untreated sanitary wastes

that pass through a sewer system.

(71) [(72)] "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.

(72) [(73)] "Draft permit" shall have the same meaning as "proposed permit".

(73) [(74)] "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(74) [(75)] "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(75) [(76)] "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(76) [(77)] "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(77) [(78)] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(78) [(79)] "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(79) [(80)] "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) [(81)] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) [(82)] "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(82) [(83)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(83) [(84)] "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 **401 KAR 34:275, [this administrative regulation.]**

(84) [(85)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85) [(86)] "Existing" 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.

(86) [(87)] "Existing component" shall have the same meaning as "existing tank system."

(87) [(88)] "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) [(89)] "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(89) [(90)] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(90) [(91)] "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation 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 site or installation of the tank system to be completed within a reasonable time.

(91) [(92)] "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(92) [(93)] "Face amount" means the total amount the insurer is obligated to pay under the policy.

(93) [(94)] "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (**for example** [e.g.], one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(94) "Facility mailing list" means the mailing list for a facility maintained in accordance with Section 7(3)(a)4c of 401 KAR 38:050.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "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.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "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.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) [~~"Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.~~]

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(114) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

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

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01-010.

(117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

(118) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(119) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(118) [~~"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.

(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit for use tank system.]

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(122) "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.

(123) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(124) [(422)] "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

[(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.]

(125) [(424)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) [(425)] "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(127) [(426)] "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) [(427)] "In existence" shall have the same meaning as "existing."

(129) [(428)] "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) [(429)] "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) [(430)] "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.

(132) [(431)] "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) [(432)] "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) [(433)] "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(135) [(434)] "In vapor service" shall have the same meaning as "in gas service".

(136) [(435)] "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) [(436)] "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(138) [(437)] "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) [(438)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) [(439)] "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) [(440)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(142) [(441)] "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

- (d) Phosphate kilns;
 - (e) Coke ovens;
 - (f) Blast furnaces;
 - (g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);
 - (h) Titanium dioxide chloride process oxidation reactors;
 - (i) Methane reforming furnaces;
 - (j) Pulping liquor recovery furnaces;
 - (k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
 - (l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or
 - (m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.
- (143) [(142)] "Infrared incinerator"** means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.
- (144) [(143)] "Injection well"** means a well into which fluids are injected to achieve subsurface emplacement.
- (145) [(144)] "Inner liner"** means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.
- (146) [(145)] "Installation inspector"** means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.
- (147) [(146)] "Interim status"** means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.
- (148) [(147)] "Intermittent stream"** means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.
- (149) [(148)] "International shipment"** means the transportation of hazardous waste into or out of the jurisdiction of the United States.
- (150) [(149)] "Internal floating roof"** means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.
- [(150)] "IUC well" means a underground injection control well as provided in 40 CFR Part 144.]**
- (151) "Karst terrain"** means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.
- (152) "Key personnel"** shall have the meaning specified in KRS 224.01-010.
- (153) "Lab pack"** means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.
- (154) "Lamp"** means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic

spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(158) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

[(158)] "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.]

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "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.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or

facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "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.

(169) **"Manifest" shall have the meaning specified in KRS 224.01-010.**

(170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

~~[(170) "Manifest" shall have the meaning specified in KRS 224.01-010.]~~

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) **"Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.**

(175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

~~[(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.]~~

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) **"New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.**

(180) "New tank component" shall have the same meaning as "new tank system."

(181) ~~[(180)]~~ "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

~~[(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.]~~

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "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.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management

unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

~~[(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.]~~

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for hazardous [solid] waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in 401 KAR Chapter 31 [40 CFR Part 261].

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

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

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "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.

(220) "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.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes 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 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "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.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land

used in connection with the waste facility or activity.

(251) **"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.**

(252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

~~[(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.]~~

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "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.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "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.

(264) **"Storage" shall have the meaning specified in KRS 224.01-010.**

(265) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

~~[(265) "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.]~~

~~[(266) "Storage" shall have the meaning specified in KRS 224.01-010.]~~

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial

business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "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.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

~~[(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").]~~

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the

requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs 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.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means :

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment" shall have the meaning specified in KRS 224.01-010.

(288) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(289) ~~[(289)]~~ "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

~~[(289) "Treatment" shall have the meaning specified in KRS 224.01-010.]~~

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 CFR Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

~~[(292)]~~ (293) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally

below the surface of and covered by the ground.

(294) [(293)] "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) [(294)] "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) [(295)] "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

- (d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) [(296)] "Universal waste handler":

(a) Means:

- 1. A generator of universal waste; or
- 2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

- 1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or
- 2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) [(297)] "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) [(298)] "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) [(299)] "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) [(300)] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302) [(301)] "Used oil" shall have the same meaning as KRS 224.50-545.

(303) [(302)] "Used or reused" means a material that is either:

- (a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

- (b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) [(303)] "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.

(305) [(304)] "Vapor recovery system" means that equipment,

device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) [(305)] "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) [(306)] "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.

(308) [(307)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) [(308)] "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) [(309)] "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" shall have the meaning specified in KRS 224.01-010.

(312) [(310)] "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) [(311)] "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314) [(312)] "Waste pile" shall have the same meaning as "pile".

(315) [(313)] "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010) [Third Edition, September 1986, as amended by Update 1, November 16, 1992 (incorporated by reference refer to § 260.11 of this chapter)]. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

[(314)] "Waste" shall have the meaning specified in KRS 224.01-040-]

(316) [(315)] "Wastewaters" means 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

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following exceptions:

(a) 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 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

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

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

(317) [(316)] "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) [(317)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

[(319) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.]

(320) [(318)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(321) [(320)] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(322) [(321)] "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) [(322)] "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) [(323)] "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| | |
|-----------------|--|
| Am. | Amended |
| C | Corrosive waste |
| CAA | Clean Air Act, as amended |
| CFR | Code of Federal Regulations |
| cm | Centimeter |
| cm ² | Centimeter squared |
| CO | Carbon monoxide |
| CO ₂ | Carbon dioxide |
| CWA | Clean Water Act, as amended |
| CERCLA | Comprehensive Environmental Response, Com- |

| | |
|-------------|---|
| DOT | United States Department of Transportation |
| DRE | Destruction and removal efficiency |
| E | Explosive waste |
| eff. | Effective |
| EPA | United States Environmental Protection Agency |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FIA | Federal Insurance Administration |
| FR | Federal Register |
| H | Acutely hazardous waste |
| ha | Hectare |
| HTMR | High temperature metals recovery |
| HSWA | Hazardous and Solid Waste Amendments of 1994 |
| I | Ignitable waste |
| KAR | Kentucky Administrative Regulation |
| kg | Kilogram |
| KPDES | Kentucky Pollution Discharge Elimination System |
| KRS | Kentucky Revised Statute |
| Ky.R. | Administrative Register of Kentucky |
| L | Liter |
| LC | Lethal concentration |
| LD | Lethal dose |
| ml | Milliliter |
| mm | Millimeter |
| N | Normal |
| NESHAPS | National Emissions Standards for Hazardous Air Pollutants |
| NPDES | National Pollutant and Discharge Elimination System |
| PCB | Polychlorinated biphenyl |
| pCi/l | Picocuries per liter |
| PHC | Principal hazardous constituent |
| Permit POHC | Permitted principal organic hazardous constituent |
| PM | Particulate matter |
| POHC | Principal organic hazardous constituent |
| ppm | parts per million |
| Trial POHC | Trial burn principal organic hazardous constituent |
| POTW | Publicly owned treatment works |
| PSD | Prevention of significant deterioration |
| psi | Pounds per square inch |
| psig | Pounds per square inch gauge |
| R | Reactive waste |
| RCRA | Resource Conservation and Recovery Act, as amended |
| SDWA | Safe Drinking Water Act, as amended |
| SEC | Securities and Exchange Commission |
| SIC | Standard Industrial Classification Code |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |
| T | Toxic waste |
| UIC | Underground Injection Control |
| UICP | Underground Injection Control Program |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| USGS | United States Geological Survey |
| USPS | United States Postal Service |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

ADMINISTRATIVE REGISTER - 2029

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in this chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated and managed and type of manage-

ment activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 34. These terms are assimilated from existing federal state and regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 34, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

401 KAR 34:060. Groundwater protection.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-520 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.46-520 requires the cabinet to establish standards for these permits, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities. This administrative regulation establishes the minimum groundwater protection standards for new hazardous waste sites or facilities. This administrative regulation is equivalent to federal standards established in 40 CFR 264 Subpart F except for: language that has been added to clarify federal intent; Section 5 of this administrative regulation, which references MCLs found in 401 KAR Chapter 8 to provide consistency with federal policy and other Kentucky environmental programs; Section 8(3) of this administrative regulation, which establishes a minimum two inch monitoring well requirement appropriate for Kentucky's unique environment; and Sections 8(11) and 13 of this administrative regulation, which provide for and establish forms to provide monitoring information for Kentucky's groundwater database.

Section 1. Applicability. (1)(a) Except as provided in subsection (2) of this section, the requirement in this administrative regulation apply to owners and operators of facilities that treat, store, or dispose of hazardous waste. The owner or operator shall satisfy the requirements of paragraph (b) of this subsection for all wastes (or constituents thereof) contained in solid waste management units at the facility regardless of the time at which waste was placed in such units.

(b) All solid waste management units shall comply with the requirements in Section 12 of this administrative regulation. A surface impoundment, waste pile, land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a "regulated unit") shall comply with the requirements of Sections 2 through 11 of this administrative regulation in lieu of Section 12 of this administrative regulation for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of Section 12 of this administrative regulation apply to regulated units.

(2) The owner or operator's regulated unit or units are not subject to administrative regulation for releases into the uppermost aquifer under this administrative regulation if:

(a) The owner or operator is exempted under Section 1 of 401 KAR 34:010; or

(b) He operates a unit which the cabinet finds:

1. Is an engineered structure;
2. Does not receive or contain liquid waste or wastes containing free liquids;
3. Is designed and operated to exclude liquid, precipitation, and other run-on and run-off;
4. Has both inner and outer layers of containment enclosing the waste;
5. Has a leak detection system built into each containment layer;
6. The owner or operator shall provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and postclosure care periods; and
7. To a reasonable degree of certainty, shall not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the postclosure care period.

(c) The cabinet finds pursuant to 401 KAR 34:220, Section 8(4) that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of 401 KAR 34:220, Section 6, has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An

exemption under this subsection can only relieve an owner or operator of responsibility to meet the requirements of this administrative regulation during the postclosure care period; [or]

(d) The cabinet finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the postclosure care period specified under 401 KAR 34:070, Section 8. This demonstration shall be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration; or

(e) He designs and operates a pile in compliance with 401 KAR 34:210, Section 1(3).

(3) This administrative regulation applies during the active life of the regulated unit (including the closure period). After closure of the regulated unit, this administrative regulation:

(a) Does not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(b) Applies during the postclosure care period under Section 8 of 401 KAR 34:070 if the owner or operator is conducting a detection monitoring program under Section 9 of this administrative regulation; or

(c) Applies during the compliance period under Section 7 of this administrative regulation if the owner or operator is conducting a compliance monitoring program under Section 10 of this administrative regulation or a corrective action program under Section 11 of this administrative regulation.

(4) This administrative regulation may apply to miscellaneous units when necessary to comply with Sections 2 through 4 of 401 KAR 34:250.

Section 2. Required Programs. (1) Owners and operators subject to this administrative regulation shall conduct a monitoring and response program as follows:

(a) Whenever hazardous constituents under Section 4 of this administrative regulation from a regulated unit are detected at the compliance point under Section 6 of this administrative regulation, the owner or operator shall institute a compliance monitoring program under Section 10 of this administrative regulation. Detected means statistically significant evidence of contamination as described in Section 9(6) of this administrative regulation;

(b) Whenever the groundwater protection standard under Section 3 of this administrative regulation is exceeded, the owner or operator shall institute a corrective action program under Section 11 of this administrative regulation. Exceeded means statistically significant evidence of increased contamination as described in Section 10(4) of this administrative regulation;

(c) Whenever hazardous constituents under Section 4 of this administrative regulation from a regulated unit exceed concentration limits under Section 5 of this administrative regulation in groundwater between the compliance point under Section 6 of this administrative regulation and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under Section 11 of this administrative regulation; or

(d) In all other cases, the owner or operator shall institute a detection monitoring program under Section 9 of this administrative regulation.

(2) The cabinet shall specify in the facility permit the specific elements of the monitoring and response program. The cabinet may include one (1) or more of the programs identified in subsection (1) of this section in the facility permit as may be necessary to protect human health and the environment and shall specify the circumstances under which each of the programs shall be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the cabinet shall consider the potential adverse

effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program shall be taken.

Section 3. Groundwater Protection Standard. The owner or operator shall comply with conditions specified in the facility permit that are designed to ensure the hazardous constituents under Section 4 of this administrative regulation detected in the groundwater from a regulated unit do not exceed the concentration limits under Section 5 of this administrative regulation in the uppermost aquifer underlying the waste management area beyond the point of compliance under Section 6 of this administrative regulation during the compliance period under Section 7 of this administrative regulation. The cabinet shall establish this groundwater protection standard in the facility permit when hazardous constituents have been detected in the groundwater.

Section 4. Hazardous Constituents. (1) The cabinet shall specify in the facility permit the hazardous constituents to which the groundwater protection standard of Section 3 of this administrative regulation applies. Hazardous constituents are constituents identified in 401 KAR 31:170 that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the cabinet has excluded them under subsection (2) of this section.

(2) The cabinet shall exclude a 401 KAR 31:170 constituent from the list of hazardous constituents specified in the facility permit if it [he] finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the cabinet shall consider the following:

- (a) Potential adverse effects on groundwater quality, considering:
 1. The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;
 2. The hydrogeological characteristics of the facility and surrounding land;
 3. The quantity of groundwater and the direction of groundwater flow;
 4. The proximity and withdrawal rates of groundwater users;
 5. The current and future uses of groundwater in the area;
 6. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
 7. The potential for health risks caused by human exposure to waste constituents;
 8. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
 9. The persistence and permanence of the potential adverse effects; and

(b) Potential adverse effects of hydraulically connected surface water quality, considering:

1. The volume and physical and chemical characteristics of the waste in the regulated unit;
2. The hydrogeological characteristics of the facility and surrounding land;
3. The quantity and quality of groundwater, and the direction of groundwater flow;
4. The patterns of rainfall in the region;
5. The proximity of the regulated unit to surface waters;
6. The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
7. The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
8. The potential for health risks caused by human exposure to waste constituents;
9. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
10. The persistence and permanence of the potential adverse

effects.

(3) In making any determination under subsection (2) of this section about the use of groundwater in the area around the facility, the cabinet shall consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.7 or as designated by the cabinet.

Section 5. Concentration Limits. (1) The cabinet shall specify in the facility permit concentration limits in the groundwater for hazardous constituents established under Section 4 of this administrative regulation. The concentration of a hazardous constituent:

(a) Must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or

(b) For any of the constituents listed in 401 KAR Chapter 8 [Table 4], shall not exceed the respective **MCL** value listed [given] in 401 KAR Chapter 8 [that Table] if the background level of the constituent is below the **MCL** value given in 401 KAR Chapter 8 and the owner or operator has utilized appropriate sampling methods capable of detecting the constituent values listed in 401 KAR Chapter 8 [Table 4]; or

(c) Shall not exceed an alternate limit established by the cabinet under subsection (2) of this section.

(2) The cabinet shall establish an alternate concentration limit for a hazardous constituent if he finds that the constituent shall not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the cabinet shall consider the following factors:

(a) Potential adverse effects on groundwater quality, considering:

[TABLE 4]

MAXIMUM CONCENTRATION OF CONSTITUENTS FOR GROUNDWATER PROTECTION

| Constituent | Maximum Concentration |
|--|-----------------------|
| Arsenic | 0.05 mg/l |
| Barium | 1.0 mg/l |
| Cadmium | 0.01 mg/l |
| Chromium | 0.05 mg/l |
| Lead | 0.05 mg/l |
| Mercury | 0.002 mg/l |
| Selenium | 0.01 mg/l |
| Silver | 0.05 mg/l |
| Endrin (1,2,3,4,10,10-hexachloro-4,7-epoxy-1,4,4a,5,6,7,8,9a-octahydro-1,4-endo, endo-5,8-dimethanonaphthalene) | 0.0002 mg/l |
| Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer) | 0.004 mg/l |
| Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenyl) ethane)) | 0.1 mg/l |
| Toxaphene (C ₁₂ H ₁₀ Cl ₈ , Technical-chlorinated camphene, 67-69 percent chlorine) | 0.005 mg/l |
| 2,4-D (2,4-Dichlorophenoxyacetic acid) | 0.1 mg/l |
| 2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid) | 0.01 mg/l |

1. The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;
2. The hydrogeological characteristics of the facility and surrounding land;
3. The quantity of groundwater and the direction of groundwater

flow;

4. The proximity and withdrawal rates of groundwater users;
5. The current and future uses of groundwater in the area;
6. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
7. The potential for health risks caused by human exposure to waste constituents;
8. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
9. The persistence and permanence of the potential adverse effects; and

(b) Potential adverse effects of hydraulically connected surface water quality, considering:

1. The volume and physical and chemical characteristics of the waste in the regulated unit;
2. The hydrogeological characteristics of the facility and surrounding land;
3. The quantity and quality of groundwater, and the direction of groundwater flow;
4. The patterns of rainfall in the region;
5. The proximity of the regulated unit to surface waters;
6. The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
7. The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
8. The potential for health risks caused by human exposure to waste constituents;
9. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
10. The persistence and permanence of the potential adverse effects.

(3) In making any determination under subsection (2) of this section about the use of groundwater in the area around the facility, the cabinet shall consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.7 or as designated by the cabinet.

Section 6. Point of Compliance. (1) The cabinet shall specify in the facility permit the point of compliance at which the groundwater protection standard of Section 3 of this administrative regulation applies and at which monitoring shall be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(2) The waste management area is the limit projected in the horizontal plane of the area on which waste shall be placed during the active life of a regulated unit.

(a) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(b) If the facility contains more than one (1) regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

Section 7. Compliance Period. (1) The cabinet shall specify in the facility permit the compliance period during which the groundwater protection standard of Section 3 of this administrative regulation applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting, and the closure period).

(2) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of Section 10 of this administrative regulation.

(3) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in subsection (1) of this section, the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard

of Section 3 of this administrative regulation has not been exceeded for a period of three (3) consecutive years.

Section 8. General Groundwater Monitoring Requirements. The owner or operator shall comply with the requirements of this section for any groundwater monitoring program developed to satisfy Section 9, 10 or 11 of this administrative regulation:

(1) The groundwater monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(a) Represents the quality of back groundwater that has not been affected by leakage from a regulated unit.

1. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

a. Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

b. Sampling at other wells shall provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells; and

(b) Represent the quality of groundwater passing the point of compliance; and

(c) Allows for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

(2) If a facility contains more than one (1) regulated unit, separate groundwater monitoring systems are not required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer shall enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(3) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring-well bore hole and shall be at least two (2) inches in diameter. This casing shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (that is, [i.e.,] the space between the bore hole and well casing) above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(4) The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program shall include procedures and techniques for:

(a) Sample collection;

(b) Sample preservation and shipment;

(c) Analytical procedures; and

(d) Chain of custody control.

(5) The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(6) The groundwater monitoring program shall include a determination of the groundwater surface elevation each time groundwater is sampled.

(7) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit shall be collected from background wells and wells at the compliance points. The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility shall be detected. The owner or operator shall determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which shall be specified in the unit permit upon approval by the cabinet. This sampling procedure shall be:

(a) A sequence of at least four (4) samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(b) An alternate sampling procedure proposed by the owner or operator and approved by the cabinet.

(8) The owner or operator shall specify one (1) of the statistical methods listed in paragraphs (a) through (e) of this subsection to be used in evaluating groundwater monitoring data for each hazardous constituent. The statistical method which the owner or operator specifies, if approved by the cabinet, shall be included in the unit permit. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (PQL's) are used in any of the following statistical procedures to comply with subsection (9)(e) of this section, the PQL [pql] shall be proposed by the owner or operator and approved by the cabinet. Use of any of the following statistical methods shall be protective of human health and the environment and shall comply with the performance standards outlined in subsection (9) of this section. The statistical methods which an owner or operator may specify are:

(a) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(b) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(c) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or [et] prediction limit.

(d) A control chart approach that gives control limits for each constituent.

(e) Another statistical test method submitted by the owner or operator and approved by the cabinet.

(9) Any statistical method chosen under subsection (8) of this section for specification in the unit permit shall comply with the following performance standards, as appropriate:

(a) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one (1) statistical method may be needed.

(b) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(c) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and shall be approved by the cabinet if it is protective of human health and the environment.

(d) If a tolerance interval or a prediction interval is used to

evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be proposed by the owner or operator and shall be approved by the cabinet if it finds these parameters to be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of concentration values for each constituent of concern.

(e) The statistical method shall account for data below the limit of detection with one (1) or more statistical procedures that are protective of human health and the environment. Any practical qualification limit (PQL [pql]) approved by the cabinet under subsection (8) of this section that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operation conditions that are available to the facility.

(f) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(10) Groundwater monitoring data collected in accordance with subsection (7) of this section, including actual levels of constituents, shall be maintained in the facility operating record. The cabinet shall specify in the permit when the data shall be submitted for review.

(11) The groundwater monitoring data may be submitted on Groundwater Sample Analysis form, DEP Form 8046 (August 1995), and Hazardous Waste Groundwater Report form, DEP Form 8046A (March 1996). These forms are incorporated by reference in Section 13 of this administrative regulation. The owner or operator may use their own document, provided the language is identical to that specified in DEP Form 8046 and DEP Form 8046A.

Section 9. Detection Monitoring Program. An owner or operator required to establish a detection monitoring program under this administrative regulation shall, at a minimum, discharge the following responsibilities:

(1) The owner or operator shall monitor for indicator parameters (for example, [e-g-] specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The cabinet shall specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(a) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(b) The mobility, stability, and persistence of waste constituents or their reaction products in the saturated and unsaturated zone beneath the waste management area;

(c) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(d) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the background groundwater quality.

(2) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under Section 6 of this regulation. The groundwater monitoring system shall comply with Section 8(1)(b), (2) and (3) of this administrative regulation.

(3) The owner or operator shall conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to subsection (1) of this section in accordance with Section 8(7) of this administrative regulation. The owner or operator shall maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under Section 8(8) of this administrative regulation.

(4) The cabinet shall specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter

or hazardous constituent specified in the permit under subsection (1) of this section in accordance with Section 8(7) of this administrative regulation. A sequence of at least four (4) samples from each well (background and compliance wells) shall be collected at least semiannually during detection monitoring.

(5) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer as specified in the permit. This determination shall be made at least annually.

(6) The owner or operator shall determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the permit pursuant to subsection (1) of this section at a frequency specified under subsection (4) of this section.

(a) In determining whether statistically significant evidence of contamination exists, the owner or operator shall use the method specified in the permit under Section 8(8) of this administrative regulation. These methods shall compare data collected at the compliance point to the background groundwater quality data.

(b) The owner or operator shall determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time after completion of sampling. The cabinet shall specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(7) If the owner or operator determines pursuant to subsection (6) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to subsection (1) of this section at any monitoring well at the compliance point, he or she shall:

(a) Notify the cabinet of this finding in writing within seven (7) days. The notification shall indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(b) Immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of 401 KAR 34:360 are present, and if so, in what concentration;

(c) For any 401 KAR 34:360 compounds found in the analysis pursuant to subsection (7)(b) of this section, the owner or operator may resample within one (1) month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents shall form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to subsection (7)(b) of this section, the hazardous constituents found during this initial 401 KAR 34:360 analysis shall form the basis for compliance monitoring;

(d) Within ninety (90) days, submit to the cabinet an application for a permit modification to establish a compliance monitoring program meeting the requirements of Section 10 of this administrative regulation. The application shall include the following information:

1. An identification of the concentration of any 401 KAR 34:360 constituent detected in the groundwater at each monitoring well at the compliance point;

2. Any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of Section 10 of this administrative regulation;

3. Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of Section 10 of this administrative regulation;

4. For each hazardous constituent detected at the compliance point, a proposed concentration limit under Section 5(1)(a) or (b) of this administrative regulation, or a notice of intent to seek an alternate concentration limit under Section 5(2) of this administrative regulation; and

(e) Within 180 days, submit to the cabinet:

1. All data necessary to justify an alternate concentration limit

sought under Section 5(2) of this administrative regulation; and

2. An engineering feasibility plan for a corrective action program necessary to meet the requirement of Section 11 of this administrative regulation, unless:

a. All hazardous constituents identified under subsection (7)(b) of this section are listed in 401 KAR Chapter 8 [Table 1 of Section 5 of this administrative regulation] and their concentrations do not exceed the respective values given in that chapter [table]; or

b. The owner or operator has sought an alternative concentration limit under Section 5(2) of this administrative regulation for every hazardous constituent identified under subsection 7(b) of this section.

(f) If the owner or operator determines, pursuant to subsection (6) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to subsection (1) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner or operator may make a demonstration under this subsection in addition to, or in lieu of, submitting a permit modification application under subsection (7)(d) of this section; however, the owner or operator is not relieved of this requirement to submit a permit modification application within the time specified in subsection (7)(d) of this section unless the demonstration made under this subsection successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

1. Notify the cabinet in writing within seven (7) days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this subsection;

2. Within ninety (90) days, submit a report to the cabinet which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

3. Within ninety (90) days, submit to the cabinet an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and

4. Continue to monitor in accordance with the detection monitoring program established under this section.

(8) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he shall, within ninety (90) days, submit an application for a permit modification to make any appropriate changes to the program.

Section 10. Compliance Monitoring Program. An owner or operator required to establish a compliance monitoring program under this administrative regulation shall, at a minimum, discharge the following responsibilities:

(1) The owner or operator shall monitor the groundwater to determine whether all regulated units are in compliance with the groundwater protection standard under Section 3 of this administrative regulation. The cabinet shall specify the groundwater protection standard in the facility permit, including:

(a) A list of the hazardous constituents identified under Section 4 of this administrative regulation;

(b) Concentration limits under Section 5 of this administrative regulation for each of those hazardous constituents;

(c) The compliance point under Section 6 of this administrative regulation; and

(d) The compliance period under Section 7 of this administrative regulation.

(2) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under Section 6 of this administrative regulation. The groundwater monitoring system shall

comply with Section 8(1)(b), (2) and (3) of this administrative regulation.

(3) The cabinet shall specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with Section 8(7) and (8) of this administrative regulation.

(a) The owner or operator shall conduct a sampling program for each chemical parameter or hazardous constituent in accordance with Section 8(7) of this administrative regulation.

(b) The owner or operator shall record groundwater analytical data as measured and in form necessary for the determination of statistical significance under Section 8(8) of this administrative regulation for the compliance period of the facility.

(4) The owner or operator shall determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to subsection (1) of this section, at a frequency specified under subsection (6) of this section.

(a) In determining whether statistically significant evidence of increased contamination exists, the owner or operator shall use the method(s) specified in the permit under Section 8(8) of this administrative regulation. The method(s) shall compare data collected at the compliance point(s) to a concentration limit developed in accordance with Section 5 of 401 KAR 34:060.

(b) The owner or operator shall determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The cabinet shall specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(5) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer as specified in the permit and which shall be no less frequently than at least annually.

(6) The cabinet shall specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with Section 8(7) of this administrative regulation. A sequence of at least four (4) samples from each well (background and compliance wells) shall be collected at least semiannually during the compliance period of the facility.

(7) The owner or operator shall analyze samples from all monitoring wells at the compliance point for all constituents contained in 401 KAR 34:360 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in Section 9(6) of this administrative regulation. If the owner or operator finds 401 KAR 34:360 constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one (1) month and repeat the 401 KAR 34:360 analysis. If the second analysis confirms the presence of new constituents, the owner or operator shall report the concentration of these additional constituents to the cabinet within seven (7) days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she shall report the concentrations of these additional constituents to the cabinet within seven (7) days after completion of the initial analysis and shall add them to the monitoring list.

(8) If the owner or operator determines, pursuant to subsection (4) of this section, that any concentration limits under Section 5 of this administrative regulation are being exceeded at any monitoring well at the point of compliance, he or she shall:

(a) Notify the cabinet of this finding in writing within seven (7) days. The notification shall indicate what concentration limits have been exceeded.

(b) Submit to the cabinet an application for a permit modification to establish a corrective action program meeting the requirements of Section 11 of this administrative regulation within 180 days, or within

ninety (90) days if an engineering feasibility study has been previously submitted to the cabinet under Section 9(8)(e) of this administrative regulation. The application shall at a minimum include the following information:

1. A detailed description of corrective actions that shall achieve compliance with the groundwater protection standard specified in the permit under subsection (1) of this section; and

2. A plan for a groundwater monitoring program that shall demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(9) If the owner or operator determines, pursuant to subsection (4) of this section, that the groundwater concentration limits under this section are being exceeded at any monitoring well at the point of compliance, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis or statistical evaluation or natural variation in the groundwater. In making a demonstration under this subsection, the owner or operator shall:

(a) Notify the cabinet in writing within seven (7) days that he intends to make a demonstration under this subsection;

(b) If appropriate, within ninety (90) days, submit a report to the cabinet which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(c) Within ninety (90) days, submit to the cabinet an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

(d) Continue to monitor in accordance with the compliance monitoring program established under this section.

(10) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he shall, within ninety (90) days, submit an application for a permit modification to make any appropriate changes to the program.

Section 11. Corrective Action Program. An owner or operator required to establish a corrective action program under this administrative regulation shall, at a minimum, discharge the following responsibilities:

(1) The owner or operator shall take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under Section 3 of this administrative regulation. The cabinet shall specify the groundwater protection standard in the facility permit, including:

(a) A list of the hazardous constituents identified under Section 4 of this administrative regulation;

(b) Concentration limits under Section 5 of this administrative regulation for each of those hazardous constituents;

(c) The compliance point under Section 6 of this administrative regulation; and

(d) The compliance period under Section 7 of this administrative regulation.

(2) The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit shall specify the specific measures that shall be taken.

(3) The owner or operator shall begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The cabinet shall specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit shall specify when the corrective action shall begin and such a requirement shall operate in lieu of Section 10(9)(b) of this administrative regulation.

(4) In conjunction with a corrective action program, the owner or

operator shall establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under Section 10 of this administrative regulation and shall be as effective as that program in determining compliance with the groundwater protection standard under Section 3 of this administrative regulation and in determining the success of a corrective action program under subsection (5) of this section, where appropriate.

(5) In addition to the other requirements of this section, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under Section 4 of this administrative regulation that exceed concentration limits under Section 5 of this administrative regulation in groundwater:

(a) Between the compliance point under Section 6 of this administrative regulation and the downgradient property boundary; and

(b) Beyond the facility boundary, where necessary to protect [preject] human health and the environment, unless the owner or operator demonstrates to the satisfaction of the cabinet that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases shall be determined on a case-by-case basis.

(c) Corrective action measures under this subsection shall be initiated and completed within a reasonable period of time as specified by the cabinet considering the extent of contamination.

(d) Corrective action measures under this subsection may be terminated upon approval of the cabinet once the concentration of hazardous constituents under Section 4 of this administrative regulation is reduced to levels below their respective concentration limits under Section 5 of this administrative regulation.

(6) The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he shall continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate to the satisfaction of the cabinet based on data from the groundwater monitoring program under subsection (4) of this section, that the groundwater protection standard of Section 3 of this administrative regulation has not been exceeded for a period of three (3) consecutive years.

(7) The owner or operator shall report in writing to the cabinet on the effectiveness of the corrective action program. The owner or operator shall submit these reports at least semiannually on a schedule determined by the cabinet.

(8) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he shall, within ninety (90) days, submit an application for a permit modification to make any appropriate changes to the program.

Section 12. Corrective Action for Solid Waste Management Units.

(1) The owner or operator of a facility or any person seeking a permit or any person closing a facility for the treatment, storage or disposal of hazardous waste shall institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(2) Corrective action shall be specified in the permit in accordance with this section and 401 KAR 34:287. The permit shall contain

schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit or closure of the facility) and assurances of financial responsibility for completing such corrective action.

(3) The owner or operator shall implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the cabinet that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases shall be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action shall be provided. These financial responsibility assurances shall be approved by the cabinet.

Section 13. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

(a) Groundwater Sample Analysis form, DEP Form 8046 (August 1995); and

(b) Hazardous Waste Groundwater Report form, DEP Form 8046A (March 1996).

(2) The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Hazardous Waste Branch, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners and operators of all hazardous waste facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First Year: The agency will have extra costs due to the increased workloads of existing staff in order to process the newly regulated entities.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: There are no additional costs.

b. Reporting and paperwork requirements: There are no additional

paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are anticipated to pay for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no alternatives to consider. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: The expected benefit is consistency with federal requirements.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes applicable to hazardous waste storage, treatment, and disposal facilities. The changes are necessary to maintain consistency between state and federal programs. Additions have been made to clarify the applicability of the standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste facilities.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. Agencies that manage hazardous waste will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 34:120. Liability requirements.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.99, 40 CFR 264.147

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

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-505, 224.46-520, and 224.46-530 and to establish the liability requirements for hazardous waste sites or facilities. This administrative regulation is equivalent to federal standards established in 40 CFR Part 264.147 except for: Section 1(1)(b) of this administrative regulation, which adds a reference to applicable statutory requirements; Sections 1(7) and 2(8) of this administrative regulation, which provide a historical reference to determine prior compliance; Section 5 of this administrative regulation, which is modified to maintain consistency with KRS 224.46-520; and this administrative regulation provides state forms equivalent to federal mechanisms for financial assurance.

Section 1. Coverage for Sudden Accidental Occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden or accidental occurrences in the amount of at least \$1,000,000 per occurrence with an annual aggregate of at least \$2,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsections (1) to (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Hazardous Waste Facility Certificate of Liability Insurance. The Hazardous Waste Facility Liability Endorsement shall be executed on DEP Form 6035K incorporated by reference in Section 4 of 401 KAR 34:080. The Certificate of Liability Insurance shall be on DEP Form 6035L [using the forms by these titles] incorporated by reference in Section 4 of 401 KAR 34:080. The owner or operator shall submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet. If requested by the cabinet, the owner or operator shall provide an originally signed duplicate of the insurance policy. An owner or operator of a new facility shall submit the originally signed duplicate of the Hazardous Waste Facility Liability Endorsement or the Hazardous Waste Facility Certificate of Liability Insurance to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(b) Each primary insurance policy shall be issued by an insurer which, at a minimum, is authorized to transact primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall be issued by an insurer which, at a minimum, is authorized to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator may meet the requirements of this administrative regulation by passing a financial test or using the corporate guarantee for liability coverage as specified in Sections 6 and 7 of this administrative regulation.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in Section 8 of this administrative regulation.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in Section 9 of this administrative regulation.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in Section 10 of this administrative regulation.

(6) An owner or operator may demonstrate the required liability coverage through use of combinations of the financial test, insurance, the corporate guarantee, letter of credit, surety bond, and trust fund [of insurance, financial test, guarantee, fund], except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the cabinet in writing within thirty (30) days whenever:

(a) ~~A claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator;~~

(b) ~~Whenever~~ A claim results in a [the] reduction in [of] the amount of financial assurance for liability coverage [under this section] provided by a financial instrument authorized by subsection (1) to (6) of this section; [or]

(b) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subsections (1) through (6) of this section; or

(c) A final court order establishing a judgment for bodily injury or

property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or against an instrument that is providing financial assurance for liability coverage under subsection (1) to (6) of this section.

(8) Notwithstanding any other provisions of this chapter, an owner or operator using liability insurance to satisfy the requirements of this administrative regulation may use, until October 16, 1982, a hazardous waste facility liability endorsement or certificate of liability insurance that does not certify that the insurer is licensed to transact the business of insurance, or eligible as an excess or surplus lines insurer, in one (1) or more states.

Section 2. Coverage for Nonsudden Accidental Occurrences. An owner or operator of a surface impoundment, landfill, land treatment facility, facility for land disposal as specified in KRS 224.01-010 or miscellaneous unit for disposal that is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain additional liability coverage for nonsudden accidental occurrences in the amount of at least \$3,000,000 per occurrence with an annual aggregate of at least \$6,000,000, exclusive of legal defense costs. An owner or operator who is required to comply with the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners and operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in subsections (1) to (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a ~~[Hazardous Waste Facility]~~ Certificate of Liability Insurance. The Hazardous Waste Facility Liability Endorsement shall be executed on DEP Form 6035K incorporated by reference in Section 4 of 401 KAR 34:080. The Certificate of Liability Insurance shall be on DEP Form 6035L [using the forms by these titles] incorporated by reference in Section 4 of 401 KAR 34:080. The owner or operator shall submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet. If requested by the cabinet, the owner or operator shall provide an originally signed duplicate of the insurance policy. An owner or operator of a new facility shall submit the originally signed duplicate of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(b) Each primary insurance policy shall be issued by an insurer which, at a minimum, is authorized to transact primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall be issued by an insurer which, at a minimum, is authorized to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator may meet the requirements of this administrative regulation by passing a financial test or using the corporate guarantee for liability coverage as specified in Sections 6 and 7 of this administrative regulation.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in Section 8 of this administrative regulation.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in Section 9 of this administrative regulation.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in Section 10 of this administrative regulation.

(6) An owner or operator may demonstrate the required liability coverage through use of combinations of the financial test, insurance, the corporate guarantee, letter of credit, surety bond, and trust bond, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the cabinet in writing within thirty (30) days whenever:

(a) ~~A claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator;~~

(b) ~~Whenever~~ A claim results in a the reduction in of the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by subsections (1) to (6) of this section; or

(b) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subsections (1) through (6) of this section; or

(c) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or ~~against~~ an instrument that is providing financial assurance for liability coverage under subsections (1) to (6) of this section.

(8) For existing facilities, the required liability coverage for nonsudden accidental occurrences shall be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding the effective date of these administrative regulations, shall determine which of the dates apply. If the owner and operator of a facility are two (2) different parties, or if there is more than one (1) owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues shall determine the date by which the coverage shall be demonstrated. The dates are as follows:

(a) For an owner or operator with sales or revenues totaling \$10,000,000 or more, February 24, 1983.

(b) For an owner or operator with sales or revenues greater than \$5,000,000 but less than \$10,000,000, February 24, 1984.

(c) All other owners or operators, February 24, 1985.

(9) Notwithstanding any other provisions of this chapter, an owner or operator using liability insurance to satisfy the requirements of this administrative regulation may use, until October 16, 1982, a hazardous waste facility liability endorsement or certificate of liability insurance that does not certify that the insurer is licensed to transact the business of insurance, or eligible as an excess or surplus lines insurer, in one (1) or more states.

Section 3. Adjustments by the Cabinet. If the cabinet determines that the levels of financial responsibility required by Sections 1 and 2 of this administrative regulation are not consistent with the degree and duration of risks associated with treatment, storage, or disposal

at any facility or group of facilities, the cabinet may increase the level of financial responsibility required under Sections 1 and 2 of this administrative regulation as may be necessary to protect human health and the environment. This adjusted level shall be based on the cabinet's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of such facilities. If the cabinet determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the cabinet may require that the owner or operator of the facility comply with Section 2 of this administrative regulation. An owner or operator shall furnish to the cabinet, within a reasonable time, any information which the cabinet requests to determine whether cause exists for such adjustments of the level or type of coverage. Any adjustment of the level or type of [required] coverage for a facility that has a permit shall be treated as a permit modification under Section 2(1)(e) of 401 KAR 38:040 and Section 2 of 401 KAR 38:050.

Section 4. Request for a Variance. If an owner or operator can demonstrate to the satisfaction of the cabinet that the increased level of financial responsibility required by Section 1 or 2 of this administrative regulation is not consistent with the degree and duration of risk associated with the treatment, storage, or disposal at each facility or group of facilities, the owner or operator may obtain a variance from the cabinet. The cabinet shall not grant any requests for a variance which seek to decrease the level of financial responsibility below the minimums required by KRS 224.46-520(3)(c). If granted, the variance shall take the form of an adjusted level of required liability coverage, such level to be based on the cabinet's assessment of the degree and duration of risk associated with the ownership or operation of each facility or group of facilities. The cabinet may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the cabinet to determine a level of financial responsibility other than that required by Sections 1 and 2 of this administrative regulation. Any request for a variance for a permitted facility shall be treated as a request for a permit modification under Section 2(1)(e) of 401 KAR 38:040 and Section 2 of 401 KAR 38:050.

Section 5. Period of Coverage. An owner or operator shall continuously provide liability coverage for a facility as required by this administrative regulation until certification of termination pursuant to the requirements of KRS 224.46-520.

Section 6. Liability Self-insurance. (1) An owner or operator may satisfy the requirements of this administrative regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall demonstrate that the level of self-insurance does not exceed ten (10) percent of equity and shall meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The owner or operator shall have:

1. Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test; and

2. Tangible net worth of at least \$10 million; and

3. Assets in the United States amounting to either, at least, ninety (90) percent of his total assets or at least six (6) times the sum of the appropriate liability coverage to be demonstrated by this test.

(b) The owner or operator shall have:

1. A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth of at least \$10 million; and

3. Tangible net worth at least six (6) times the amount of the liability coverage to be demonstrated by this test; and

4. Assets located in the United States amounting to either, at

least, ninety (90) percent of his total assets or at least six (6) times the amount of the liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (1) of this section refers to the annual aggregate amounts for which coverage is required under Sections 1 and 2 of this administrative regulation.

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three (3) items to the cabinet:

(a) A letter signed by the owner's or operator's chief financial officer and executed on the form entitled Letter from Chief Financial Officer to Demonstrate Liability Coverage or to Demonstrate Liability Coverage and Assurance of Closure or Postclosure Care, DEP Form 6035G, as incorporated by reference in Section 14 of 401 KAR 34:080. If the owner or operator is using the financial test to demonstrate both assurance for closure or postclosure, as specified in Section 8 of 401 KAR 34:090, Section 8 of 401 KAR 34:100, Section 7 of 401 KAR 35:090 or Section 7 of 401 KAR 35:100 and liability coverage, he shall submit the letter on the form entitled Letter from Chief Financial Officer to Demonstrate Liability Coverage or to Demonstrate Liability Coverage and Assurance of Closure or Postclosure Care, DEP Form 6035G, as incorporated by reference in Section 4 of 401 KAR 34:080 to cover both forms of financial responsibility;

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in subsection (3) of this section to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal.

(5) After the initial submission of items specified in subsection (3) of this section, the owner or operator shall send updated information to the cabinet within ninety (90) days after the close of each succeeding fiscal year. This information shall consist of all three (3) items specified in subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a corporate guarantee for the entire amount of required liability coverage as specified in this administrative regulation. Evidence of liability coverage (insurance) shall be submitted to the cabinet within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The cabinet may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (3) of this section. If the cabinet finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (1) of this section, the owner or operator shall provide liability insurance as specified in this administrative regulation within thirty (30) days after notification of such a finding.

(8) The cabinet may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subsection (3)(c) of this section). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The cabinet shall evaluate other qualifications on an

individual basis. The owner or operator shall provide liability insurance for the entire amount of liability coverage as specified in this administrative regulation within thirty (30) days after notification of the disallowance.

Section 7. Corporate Guarantee for Liability Coverage. (1) Subject to subsection (2) of this section, an owner or operator may meet the requirements of this administrative regulation by obtaining a written guarantee, referred to as Corporate Guarantee for Liability Coverage. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" as defined in Section 1 of 401 KAR 34:005 [34:090] with the owner or operator. The guarantor shall meet the requirements for owners or operators in Section 6(1) to (8) of this administrative. The [wording of the] Corporate Guarantee for Liability Coverage shall be executed on DEP Form 6035H2 [the form entitled "Corporate Guarantee for Closure or Postclosure Care", as] incorporated by reference in Section 4 of 401 KAR 34:080. A certified copy of the Corporate Guarantee for Liability Coverage shall accompany the items sent to the cabinet as specified in Section 6(3) of this administrative regulation. One (1) of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the Corporate Guarantee for Liability Coverage shall provide that:

(a) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this Corporate Guarantee for Liability Coverage, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(b) The Corporate Guarantee for Liability Coverage shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the cabinet. This guarantee may not be terminated unless and until the cabinet approves alternate liability coverage complying with this administrative regulation or 401 KAR 35:120.

(2)(a) In the case of corporations incorporated in the United States, a Corporate Guarantee for Liability Coverage may be used to satisfy the requirements of this administrative regulation only if the Attorney General or insurance commissioner of the state in which the guarantor is incorporated, each state in which a facility covered by the guarantee is located and in the state in which it has its principle place of business, have submitted a written statement to the director that a Corporate Guarantee for Liability Coverage executed as described in this administrative regulation and incorporated by reference in Section 4 of 401 KAR 34:080 is a legally valid and enforceable obligation in that state and in Kentucky.

(b) In the case of corporations incorporated outside of the United States, a Corporate Guarantee for Liability Coverage may be used to satisfy the requirements of this section only if the non-United States corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which it has its principle place of business, and the attorney general or insurance commissioner of each state in which a facility covered by the guarantee is located, and the state in which the guarantor corporation has its principle place of business, and the Department of Law or the Insurance Commissioner of the Commonwealth of Kentucky has submitted a written statement to the director that a Corporate Guarantee for Liability Coverage executed as

described in this section ~~[and Section 1(2) of 401 KAR 34:080]~~ is a legally valid and enforceable obligation in that state and in Kentucky.

(c) A corporate guarantee may be used to satisfy the requirements of this administrative regulation only if the assets to be collected are located in the United States. Failure to provide the written statement referenced in paragraphs (a) and (b) of this subsection shall be grounds for denial of the instrument.

Section 8. Letter of Credit for Liability Coverage. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining an irrevocable stand-by letter of credit that conforms to the requirements of this section and submitting a copy of the letter of credit to the cabinet. The irrevocable standby letter of credit may be submitted on either DEP Form 6035Q or DEP 6035N. The Irrevocable Standby Letter of Credit to Demonstrate Liability Coverage, DEP Form 6035Q and the Irrevocable Standby Letter of Credit to Demonstrate Liability Coverage with Standby Trust Agreement, DEP Form 6035N are incorporated by reference in Section 4 of 401 KAR 34:080. The owner or operator may use his own document, provided the language is identical to that specified in either DEP Form 6035Q or 6035N. If the owner or operator chooses to establish a trust fund as described in subsection (4) of this section, DEP Form 6035N should be submitted along with the standby trust agreement as specified in subsection (5) of this section.

(2) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(3) A letter of credit may be used to satisfy the requirements of this administrative regulation only if the assets to be collected are located in the United States. Failure to provide the written statement referenced in subsections (1) and (2) of this section shall be grounds for denial of the instrument.

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(5) The standby trust shall be submitted on DEP Form 6035R (the form) entitled "[Irrevocable] Standby Trust Agreement for Letter of Credit Demonstrating Liability Coverage [with Cover Letter for Letter of Credit]", as incorporated by reference in Section 4 of 401 KAR 34:080, and submitted with the Irrevocable Standby Letter of Credit to Demonstrate Liability Coverage with Standby Trust Agreement, DEP Form 6035N.

Section 9. Surety Bond for Liability Coverage. (1) An owner or operator may satisfy the requirements of this administrative regulation by obtaining a Payment Bond to Demonstrate Liability Coverage ~~[surety bond]~~ that conforms to the requirements of this section and submitting a copy of the bond to the cabinet.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) A Payment Bond to Demonstrate Liability Coverage ~~[surety bond]~~ may be used to satisfy the requirements of this administrative regulation only if the assets to be collected are located in the United States. Failure to provide the written statement referenced in subsection (4) of this section shall be grounds for denial of the instrument.

(4) A Payment Bond to Demonstrate Liability Coverage ~~[surety bond]~~ may be used to satisfy the requirements of this section only if the attorney general or insurance commissioner of the state in which the surety is incorporated, and each state in which a facility covered

by the Payment Bond to Demonstrate Liability Coverage ~~[surety bond]~~ is located have provided a written statement to the cabinet that a Payment Bond to Demonstrate Liability Coverage ~~[surety bond]~~ executed as described in this section and executed on DEP Form 6035Q ~~(the form)~~ incorporated by reference in Section 4 of 401 KAR 34:080 is legally valid and enforceable obligation in that state.

Section 10. Trust Fund for Liability Coverage. (1) An owner or operator may satisfy the requirements of this administrative regulation by establishing a trust fund that conforms to the requirements of this section and submitting an originally signed duplicate of the Trust Agreement to Demonstrate Liability Coverage, executed on DEP Form 6035P, incorporated by reference in Section 4 of 401 KAR 34:080. ~~[to the cabinet]~~

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. ~~[For purposes of this subsection, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.]~~

(4) A trust fund may be used to satisfy the requirements of this administrative regulation only if the assets to be collected are located in the United States. ~~[Notwithstanding any other provisions of this part, an owner or operator using liability insurance to satisfy the requirements of this section may use, until October 16, 1992, a hazardous waste facility liability endorsement or certificate of liability insurance that does not certify that the insurer is licensed to transact the business of insurance, or eligible as an excess or surplus lines insurer, in one or more states.]~~

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners and operators of hazardous waste facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public

comments received, for the:

1. First year following implementation: No public comments were received.
2. Second and subsequent years: No public comments were received.
3. Effects on the promulgating administrative body:
 - a. Direct and indirect costs or savings:
 1. First year: The existing staff will have an increased workload in order to process the newly regulated entities. The increase in workload will also increase costs.
 2. Continuing costs or savings: Once the new entities are processed, there should not be any extra costs.
 3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.
 - b. Reporting and paperwork requirements: There are no extra reporting requirements.
4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.
5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of the regulation.
6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:
 - a. Geographical area in which administrative regulation will be implemented: No public comments were received.
 - b. Kentucky: No public comments were received.
7. Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. These changes are consistent with federal standards and clarify the procedure for demonstrating liability coverage.
8. Assessment of expected benefits of the administrative regulation: These changes are consistent with federal standards and clarify the procedure for demonstrating liability coverage.
- 9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable.
- b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.
- c. If detrimental effect would result, explain detrimental effect: Not applicable.
10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.
 - a. Necessity of proposed regulation if in conflict: Not applicable.
 - b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
11. Any additional information or comments: No additional comments.
12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies to hazardous waste facilities, consistent with federal standards, 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 for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.
2. State compliance standards: The proposed amendments adopt changes including hazardous waste sites or facilities. The changes are necessary to maintain consistency between state and federal programs. Additions and exclusions have been made to clarify the

applicability of the standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste facilities.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the Cabinet to establish a comprehensive program for the proper management of hazardous waste. Agencies that manage hazardous waste facilities will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 34:281. Air emission standards for tanks, surface impoundments, and containers.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR Part 264 Subpart CC

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

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-520 and 224.46-530 and to establish air emissions standards for tanks, surface impoundments, and containers. This administrative regulation is equivalent to federal standards established in 40 CFR 264 Subpart CC except the date of compliance listed in Section 1 of this administrative regulation has been changed to reflect the original effective date of this administrative regulation.

Section 1. Applicability. (1) The requirements of this administrative regulation apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either 401 KAR 34:180, 34:190, or 34:200 except as Section 1 of 401 KAR 34:010 and subsection (2) of this section provide otherwise.

(2) The requirements of this administrative regulation do not apply to the following hazardous waste management units at the facility:

(a) A hazardous waste management unit that holds hazardous waste placed in the unit before the effective date of this administrative regulation [June 6, 1996], and in which no hazardous waste is added to the unit on or after this date.

(b) A container that has a design capacity less than or equal to 0.1 m³ (26.4 gallons).

(c) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure of the tank pursuant to an approved closure plan.

(d) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure of the surface impoundment pursuant to an approved closure plan.

(e) A hazardous waste management unit that is used solely for on-site treatment or storage of hazardous waste that is generated as the result of implementing remedial activities required under the corrective action authorities of KRS 224.01-400, or KRS 224.46-530.

(f) A hazardous waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act.

(3) For the owner and operator of a facility subject to this administrative regulation and who received a final permit under KRS 224.46-520 prior to the effective date of this administrative regulation [June 6, 1996], the requirements of this administrative regulation shall be incorporated into the permit when the permit is reissued in accordance with the requirements of Section 12 of 401 KAR 38:050 or reviewed in accordance with the requirements of Section 5(4) of 401 KAR 38:040. Until such date when the owner and operator receives a final permit incorporating the requirements of this administrative regulation, the owner and operator is subject to the requirements of 401 KAR 35:281.

(4) The requirements of this administrative regulation, except for the recordkeeping requirements specified in Section 9(9) of this administrative regulation, shall not apply to a tank or container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations when the owner or operator of the unit meets all of the following conditions:

(a) The owner or operator identifies that the tank or container receives hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one or more of these organic peroxides, could potentially undergo self-accelerating thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purpose of meeting the conditions of this paragraph, "organic peroxide" means an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

(b) The owner or operator prepares documentation, in accordance with the requirements of Section 9(9) of this administrative regulation, explaining why an undue safety hazard would be created if air emission controls specified in Sections 4, 6, and 7 of this administrative regulation are installed and operated on the tanks and containers used at the facility to manage the hazardous waste generated by the

organic peroxide manufacturing process or processes meeting the conditions of paragraph (a) of this subsection.

(c) The owner or operator notifies the cabinet in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of paragraph (a) of this subsection are managed at the facility in tanks or containers meeting the conditions of paragraph (b) of this subsection. The notification shall state the name and address of the facility, and be signed and dated by an authorized representative of the facility owner or operator.

(5) For the purposes of this administrative regulation, the abbreviations in parentheses apply to equations used in 401 KAR 35:281.

Section 2. Standards: General. (1) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this administrative regulation.

(2) The owner or operator shall control air emissions from each hazardous waste management unit in accordance with standards specified in Sections 4 through 7 of this administrative regulation, as applicable to the hazardous waste management unit, except as provided for in subsection (3) of this section.

(3) A hazardous waste management unit is exempted from standards specified in Section 4 through 7 of this administrative regulation provided that all hazardous waste placed in the hazardous waste management unit is determined by the owner or operator to meet either of the following conditions:

(a) The average volatile organic (VO) concentration of the hazardous waste at the point of waste origination is less than 100 parts per million by weight (ppmw). The average VO concentration shall be determined by the procedures specified in Section 3(1) of this administrative regulation.

(b) The organic content of the hazardous waste has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

1. A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_T) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in Section 3(2) of this administrative regulation.

2. A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 50 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in Section 3(2) of this administrative regulation.

3. A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in Section 3(2) of this administrative regulation.

4. A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

a. The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than ninety-five (95) percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined in accordance with

the procedures specified in Section 3(2) of this administrative regulation.

b. The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in Section 3(2) of this administrative regulation.

5. A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

a. All of the materials entering the process are hazardous wastes.

b. From the point of waste origination through the point where the hazardous waste enters the process, the hazardous waste is continuously managed in hazardous waste management units that use air emission controls in accordance with the standards specified in Sections 4 through 7 of this administrative regulation, as applicable to the hazardous waste management unit.

c. The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual hazardous waste streams entering the process or 100 ppmw, whichever value is lower. The average VO concentration of each individual hazardous waste stream at the point of waste origination shall be determined using the procedure specified in Section 3(1) of this administrative regulation. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedure specified in Section 3(2) of this administrative regulation.

6. A hazardous waste incinerator for which the owner or operator has either:

a. Been issued a final permit under 401 KAR Chapter 38, and designs and operates the unit in accordance with the requirements of 401 KAR 34:240; or

b. Has certified compliance with the interim status requirements of 401 KAR 35:240.

7. A boiler or industrial furnace for which the owner or operator has either:

a. Been issued a final permit under 401 KAR Chapter 38, and designs and operates the unit in accordance with the requirements of 401 KAR 36:020 and 36:025; or

b. Has certified compliance with the interim status requirements of 401 KAR 36:020.

(4) When a process is used for the purpose of treating a hazardous waste to meet one of the sets of conditions specified in subsections (3)(b)1 through (5) of this section, each material removed from or exiting the process that is not a hazardous waste but has an average VO concentration equal to or greater than 100 ppmw shall be managed in a hazardous waste management unit in accordance with the requirements of subsection (2) of this section.

(5) The cabinet may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(a) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of Section 3(1) of this administrative regulation. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of Section 3(2) of this administrative regulation.

(b) In a case when the owner or operator is requested to perform the waste determination, the cabinet may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(c) In a case when the results of the waste determination performed or requested by the cabinet do not agree with the results

of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of paragraph (a) of this subsection shall be used to establish compliance with the requirements of this administrative regulation.

(d) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the cabinet may elect to establish compliance with this administrative regulation by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a one (1) hour period as follows:

1. The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of Section 3(1) of this administrative regulation.

2. Results of the waste determination performed or requested by the cabinet showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 100 ppmw shall constitute noncompliance with this administrative regulation except in a case as provided for in subparagraph 3 of this paragraph.

3. For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than one (1) hour to be less than 100 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given one (1) hour period may be equal to or greater than 100 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (for example, test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of Sections 3(1) and 9 of this administrative regulation shall be considered by the cabinet together with the results of the waste determination performed or requested by the cabinet in establishing compliance with this administrative regulation.

Section 3. Waste Determination Procedures. (1) Waste determination procedure for average (VO) concentration of a hazardous waste at the point of waste origination.

(a) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in hazardous waste management units exempted under the provisions of Section 2(3)(a) of this administrative regulation from using air emission controls in accordance with standards specified in Sections 4 through 7 of this administrative regulation, as applicable to the hazardous waste management unit.

(b) The VO concentration at the point of waste origination for a hazardous waste shall be determined in accordance with the procedures specified in Sections 4(1)(b) through (f) of 401 KAR 35:281.

(2) Waste determination procedures for treated hazardous waste.

(a) An owner or operator shall perform the applicable waste determinations for each treated hazardous waste placed in hazardous waste management units exempted under the provisions of Section 2(3)(b) of this administrative regulation from using air emission controls in accordance with standards specified in Sections 4 through 7 of this administrative regulation, as applicable to the hazardous waste management unit.

(b) The waste determination for a treated hazardous waste shall be performed in accordance with the procedures specified in Section 4(2)(b) through (j) of 401 KAR 35:281, as applicable to the treated hazardous waste.

(3) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(a) An owner or operator shall determine the maximum organic

vapor pressure for each hazardous waste placed in tanks using air emission controls in accordance with standards specified in Section 4(3) of this administrative regulation.

(b) The maximum organic vapor pressure of the hazardous waste shall be determined in accordance with the procedures specified in Section 4(3)(b) through (d) of 401 KAR 35:281.

Section 4. Standards: Tanks. (1) This section applies to owners and operators of tanks subject to this administrative regulation into which any hazardous waste is placed except for the following tanks:

(a) A tank in which all hazardous waste entering the tank meets the conditions specified in Section 2(3) of this administrative regulation; or

(b) A tank used for biological treatment of hazardous waste in accordance with the requirements of Section 2(3)(b)4 of this administrative regulation.

(2) The owner or operator shall place the hazardous waste into one of the following tanks:

(a) A tank equipped with a cover (for example, a fixed roof) that is vented through a closed-vent system to a control device in accordance with the requirements specified in subsection (4) of this section;

(b) A tank equipped with a fixed roof and internal floating roof in accordance with the requirements of Section 11 of this administrative regulation;

(c) A tank equipped with an external floating roof in accordance with the requirements of Section 11 of this administrative regulation; or

(d) A pressure tank that is designed to operate as a closed system such that the tank operates with no detectable organic emissions at all times that hazardous waste is in the tank except as provided for in subsection (7) of this section.

(3) As an alternative to complying with subsection (2) of this section, an owner or operator may place hazardous waste in a tank equipped with a cover (for example, a fixed roof) meeting the requirements specified in subsection (4)(a) of this section when the hazardous waste is determined to meet all of the following conditions:

(a) The hazardous waste is neither mixed, stirred, agitated, nor circulated within the tank by the owner or operator using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(b) The hazardous waste in the tank is not heated by the owner or operator except during conditions requiring that the waste be heated to prevent the waste from freezing or to maintain adequate waste flow conditions for continuing normal process operations;

(c) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction; and

(d) The maximum organic vapor pressure of the hazardous waste in the tank as determined using the procedure specified in Section 3(3) of this administrative regulation is less than the following applicable value:

1. If the tank design capacity is equal to or greater than 151 m³ (39,893 gallons), then the maximum organic vapor pressure shall be less than five and two-tenths (5.2) kPa (gauge);

2. If the tank design capacity is equal to or greater than seventy-five (75) m³ (19,814 gallons) but less than 151 m³, then the maximum organic vapor pressure shall be less than twenty-seven and six-tenths (27.6) kPa (gauge); or

3. If the tank design capacity is less than seventy-five (75) m³ (19,814 gallons), then the maximum organic vapor pressure shall be less than seventy-six and six-tenths (76.6) kPa (gauge).

(4) To comply with subsection (2)(a) of this section, the owner or operator shall design, install, operate, and maintain a cover that vents the organic vapors emitted from hazardous waste in the tank through a closed-vent system connected to a control device.

(a) The cover shall be designed and operated to meet the

following requirements:

1. The cover and all cover openings (for example, access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

2. Each cover opening shall be secured in a closed, sealed position (for example, covered by a gasketed lid or cap) at all times that hazardous waste is in the tank except as provided for in subsection (6) of this section.

(b) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section 7 of this administrative regulation.

(5) The owner and operator shall install, operate, and maintain enclosed pipes or other closed-systems, the cabinet considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a "closed systems", to:

(a) Transfer all hazardous waste to the tank from another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 2(3) of this administrative regulation; and

(b) Transfer all hazardous waste from the tank to another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 2(3) of this administrative regulation.

(6) Each cover opening shall be secured in a closed, sealed position (for example, covered by a gasketed lid) at all times that hazardous waste is in the tank except when it is necessary to use the cover opening to:

(a) Add, remove, inspect, or sample the material in the tank;

(b) Inspect, maintain, repair, or replace equipment located inside the tank; or

(c) Vent gases or vapors from the tank to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of Section 7 of this administrative regulation.

(7) One (1) or more safety devices that vent directly to the atmosphere may be used on the tank, cover, closed-vent system, or control device provided each safety device meets all of the following conditions:

(a) The safety device is not used for planned or routine venting of organic vapors from the tank or closed-vent system connected to a control device; and

(b) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the tank, cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

Section 5. Standards: Surface Impoundments. (1) This section applies to owners and operators of surface impoundments subject to this administrative regulation into which any hazardous waste is placed except for the following surface impoundments:

(a) A surface impoundment in which all hazardous waste entering the surface impoundment meets the conditions specified in Section 2(3) of this administrative regulation; or

(b) A surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of Section 2(3)(b)4 of this administrative regulation.

(2) The owner or operator shall place the hazardous waste into a surface impoundment equipped with a cover (for example, an air-supported structure or a rigid cover) that is vented through a closed-vent system to a control device meeting the requirements specified in subsection (4) of this section.

(3) As an alternative to complying with subsection (2) of this section, an owner or operator may place hazardous waste in a

surface impoundment equipped with a floating membrane cover meeting the requirements specified in subsection (5) of this section when the hazardous waste is determined to meet all of the following conditions:

(a) The hazardous waste is neither mixed, stirred, agitated, nor circulated within the surface impoundment by the owner or operator using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(b) The hazardous waste in the surface impoundment is not heated by the owner or operator; and

(c) The hazardous waste is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction.

(4) To comply with subsection (2) of this section, the owner or operator shall design, install, operate, and maintain a cover that vents the organic vapors emitted from hazardous waste in the surface impoundment through a closed-vent system connected to a control device.

(a) The cover shall be designed and operated to meet the following requirements:

1. The cover and all cover openings (for example, access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

2. Each cover opening shall be secured in the closed, sealed position (for example, covered by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except as provided for in subsection (7) of this section.

3. The closed-vent system and control device shall be designed and operated in accordance with Section 7 of this administrative regulation.

(5) To comply with subsection (3) of this section, the owner or operator shall design, install, operate, and maintain a floating membrane cover that meets all of the requirements specified in Section 6(5)(a) through (d) of 401 KAR 35:281.

(6) The owner or operator shall install, operate, and maintain enclosed pipes or other closed-systems, the cabinet considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a "closed system", to:

(a) Transfer all hazardous waste to the surface impoundment from another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 2(3) of this administrative regulation; and

(b) Transfer all hazardous waste from the surface impoundment to another tank, surface impoundment, or container subject to this administrative regulation except for those hazardous wastes that meet the conditions specified in Section 2(3) of this administrative regulation.

(7) Each cover opening shall be secured in the closed, sealed position (for example, a cover by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except when it is necessary to use the cover opening to:

(a) Add, remove, inspect, or sample the material in the surface impoundment;

(b) Inspect, maintain, repair, or replace equipment located underneath the cover;

(c) Remove treatment residues from the surface impoundment in accordance with the requirements of Section 4 of 401 KAR 37:010; or

(d) Vent gases or vapors from the surface impoundment to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of Section 7 of this administrative regulation.

(8) One (1) or more safety devices that vent directly to the atmosphere may be installed on the cover, closed-vent system, or control device provided each device meets all of the following

conditions:

(a) The safety device is not used for planned or routine venting of organic vapors from the surface impoundment or the closed-vent system connected to a control device; and

(b) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

Section 6. Standards: Containers. (1) This section applies to the owners and operators of containers having design capacities greater than 0.1 m³ (26.4 gallons) subject to this administrative regulation into which any hazardous waste is placed except for a container in which all hazardous waste entering the container meets the conditions specified in Section 2(3) of this administrative regulation.

(2) An owner or operator shall manage hazardous waste in containers using the following procedures:

(a) The owner or operator shall place the hazardous waste into one of the following containers except when a container is used for hazardous waste treatment as required by paragraph (b) of this subsection:

1. A container that is equipped with a cover that operates with no detectable organic emissions when all container openings (for example, lids, bungs, hatches, and sampling ports) are secured in a closed, sealed position. The owner or operator shall determine that a container operates with no detectable emissions by testing each opening on the container for leaks in accordance with Method 21 in 40 CFR Part 60, Appendix A the first time any portion of the hazardous waste is placed into the container. If a leak is detected and cannot be repaired immediately, the hazardous waste shall be removed from the container and the container not used to meet the requirements of this subsection until the leak is repaired and the container is retested.

2. A container having a design capacity less than or equal to 0.46 m³ (121.5 gallons) that is equipped with a cover and complies with all applicable Department of Transportation regulations on packaging hazardous waste for transport under 49 CFR Subpart C.

a. A container that is managed in accordance with the requirements of 49 CFR Subpart C for the purpose of complying with this administrative regulation is not subject to any exceptions to the 49 CFR Subpart C regulations, except as noted in paragraph (a)2b of this subsection.

b. A lab pack that is managed in accordance with the requirements of 49 CFR Subpart C for the purpose of complying with this administrative regulation may comply with the exceptions for combination packagings specified in 49 CFR Subpart C.

3. A container that is attached to or forms a part of any truck, trailer, or railcar; and that has been demonstrated within the preceding 12 months to be organic vapor tight when all container openings are in a closed, sealed position (for example, the container hatches or lids are gasketed and latched). For the purpose of meeting the requirements of this subsection, a container is organic vapor tight if the container sustains a pressure change of not more than 750 pascals (0.11 psi) within 5 minutes after it is pressurized to a minimum of 4,500 pascals (0.65 psi). This condition is to be demonstrated using the pressure test specified in Method 27 of 40 CFR Part 60, Appendix A, and a pressure measurement device that has a precision of ± 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(b) An owner or operator treating hazardous waste in a container by either a waste stabilization process, any process that requires the addition of heat to the waste, or any process that produces an exothermic reaction shall meet the

following requirements:

1. Whenever it is necessary for the container to be open during the treatment process, the container shall be located inside an enclosure that is vented through a closed-vent system to a control device.

2. The enclosure shall be a structure that is designed and operated in accordance with the following requirements:

a. The enclosure shall be a structure that is designed and operated with sufficient airflow into the structure to capture the organic vapors emitted from the hazardous waste in the container and vent the vapors through the closed-vent system to the control device.

b. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The pressure drop across each opening in the enclosure shall be maintained at a pressure below atmospheric pressure such that whenever an open container is placed inside the enclosure no organic vapors released from the container exit the enclosure through the opening. The owner or operator shall determine that an enclosure achieves this condition by measuring the pressure drop across each opening in the enclosure. If the pressure within the enclosure is equal to or greater than atmospheric pressure then the enclosure does not meet the requirements of this section.

3. The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section 7 of this administrative regulation.

(c) An owner or operator transferring hazardous waste into a container having a design capacity greater than 0.46 m³ (121.5 gallons) shall meet the following requirements:

1. Hazardous waste transfer by pumping shall be performed using a conveyance system that uses a tube (for example, pipe, hose) to add the waste into the container. During transfer of the waste into the container, the cover shall remain in place and all container openings shall be maintained in a closed, sealed position except for those openings through which the tube enters the container and as provided for in subsection (3) of this section. The tube shall be positioned in a manner such that either the:

a. Tube outlet continuously remains submerged below the waste surface at all times waste is flowing through the tube;

b. Lower bottom edge of the tube outlet is located at a distance no greater than two inside diameters of the tube or 15.25 cm (6 inches), whichever distance is greater, from the bottom of the container at all times waste is flowing through the tube; or

c. Tube is connected to a permanent port mounted on the bottom of the container so that the lower edge of the port opening inside the container is located at a distance equal to or less than 15.25 cm (6 inches) from the container bottom.

2. Hazardous waste transferred by a means other than pumping shall be performed such that during transfer of the waste into the container, the cover remains in place and all container openings are maintained in a closed, sealed position except for those openings through which the hazardous waste is added and as provided for in subsection (4) of this section.

(3) Each container opening shall be maintained in a closed, sealed position (for example, covered by a gasketed lid) at all times that hazardous waste is in the container except when it is necessary to use the opening to:

(a) Add, remove, inspect, or sample the material in the container;

(b) Inspect, maintain, repair, or replace equipment located inside the container; or

(c) Vent gases or vapors from a cover located over or enclosing an open container to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of Section 7 of this administrative regulation.

(4) One or more safety devices that vent directly to the atmosphere may be used on the container, cover, enclosure, closed-vent

system, or control device provided each device meets all of the following conditions:

(a) The safety device is not used for planned or routine venting of organic vapors from the container, cover, enclosure, or closed-vent system connected to a control device; and

(b) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the container, cover, enclosure, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

Section 7. Standards: Closed-vent Systems and Control Devices.

(1) This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this administrative regulation.

(2) The closed-vent system shall meet the following requirements:

(a) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the hazardous waste management unit to a control device that meets the requirements specified in subsection (3) of this section.

(b) The closed-vent system shall be designed and operated in accordance with the requirements specified in Section 4(11) of 401 KAR 34:275.

(c) If the closed-vent system contains one or more bypass devices that may be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the following requirements:

1. For each bypass device except as provided for in subparagraph 2 of this paragraph, the owner or operator shall either:

a. Install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that indicates at least once every 15 minutes whether gas, vapor, or fume flow is present in the bypass device; or

b. Secure a valve installed at the inlet to the bypass device in the closed position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position.

2. Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of subparagraph 1 of this paragraph.

(3) The control device shall meet the following requirements:

(a) The control device shall be one of the following devices:

1. A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

2. An enclosed combustion device designed and operated in accordance with the requirements of Section 4(3) of 401 KAR 34:275; or

3. A flare designed and operated in accordance with the requirements of Section 4(4) of 401 KAR 34:275.

(b) The control device shall be operating at all times when gases, vapors, or fumes are vented from the hazardous waste management unit through the closed-vent system to the control device.

(c) The owner or operator using a carbon adsorption system to comply with paragraph (a) of this subsection shall operate and maintain the control device in accordance with the following requirements:

1. Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of Section 4(7) or (8) of 401 KAR 34:275.

2. All carbon removed from the control device shall be managed

in accordance with the requirements of Section 4(13) of 401 KAR 34:275.

(d) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with subsection (3)(a) of this section shall operate and maintain the control device in accordance with the requirements of Section 4(10) of 401 KAR 34:275.

(e) The owner or operator shall demonstrate that a control device achieves the performance requirements of subsection (3)(a) of this section as follows:

1. An owner or operator shall demonstrate using either a performance test as specified in subparagraph 3 of this paragraph or a design analysis as specified in subparagraph 4 of this paragraph the performance of each control device except for the following:

- a. A flare;
- b. A boiler or process heater with a design heat input capacity of 44 megawatts or greater;
- c. A boiler or process heater into which the vent stream is introduced with the primary fuel;
- d. A boiler or process heater burning hazardous waste for which the owner or operator has been issued a final permit under 401 KAR Chapter 38 and designs and operates the unit in accordance with the requirements of 401 KAR 36:020; or
- e. A boiler or process heater burning hazardous waste for which the owner or operator has certified compliance with the interim status requirements of 401 KAR 36:020.

2. An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in Section 4(5) of 401 KAR 34:275.

3. For a performance test conducted to meet the requirements of subparagraph 1 of this paragraph, the owner or operator shall use the test methods and procedures specified in Section 5(3)(a) through (d) of 401 KAR 34:275.

4. For a design analysis conducted to meet the requirements of subparagraph 1 of this paragraph, the design analysis shall meet the requirements specified in Section 6(2)(d)3 of 401 KAR 34:275.

5. The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of subsection (3)(a) of this section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(f) If the owner or operator and the cabinet do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of subparagraph 3 of this paragraph. The cabinet may choose to have an authorized representative observe the performance test.

Section 8. Inspection and Monitoring Requirements. (1) This section applies to an owner or operator using air emission controls in accordance with the requirements of Sections 4 through 7 of this administrative regulation.

(2) Each cover used in accordance with requirements of Sections 4 through 6 of this administrative regulation shall be visually inspected and monitored for detectable organic emissions by the owner or operator using the procedure specified in Section 9(6)(a) through (g) of 401 KAR 35:281 except as follows:

(a) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in Section 9(6)(a) through (g) of 401 KAR 35:281 for the following tank covers:

- 1. A tank internal floating roof that is inspected and monitored in accordance with the requirements of Section 11 of this administrative regulation; or
- 2. A tank external floating roof that is inspected and monitored in accordance with the requirements of Section 11 of this administrative

regulation.

(b) If a tank is buried partially or entirely underground, an owner or operator is required to perform the cover inspection and monitoring requirements specified in Section 9(6)(a) through (g) of 401 KAR 35:281 only for those portions of the tank cover and those connections to the tank cover or tank body (for example fill ports, access hatches, gauge wells, etc.) that extend to or above the ground surface and can be opened to the atmosphere.

(c) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in Section 9(6)(a) through (g) of 401 KAR 35:281 for a container that meets all requirements specified in either Section 6(2)(a)2 or 3 of this administrative regulation.

(d) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in Section 9(6)(a) through (g) of 401 KAR 35:281 for an enclosure used to control air emissions from containers in accordance with the requirements of Section 6(2)(b) of this administrative regulation.

(3) Each closed-vent system used in accordance with the requirements of Section 7 shall be inspected and monitored by the owner or operator in accordance with the procedure specified in Section 4(11) of 401 KAR 34:275.

(4) Each control device used in accordance with the requirements of Section 7 of this administrative regulation shall be inspected and monitored by the owner or operator in accordance with the procedures specified in Section 4(6) and (9) of 401 KAR 34:275.

(5) The owner or operator shall develop and implement a written plan and schedule to perform all inspection and monitoring requirements of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under Section 6 of 401 KAR 34:020.

Section 9. Recordkeeping Requirements. (1) Each owner or operator of a facility subject to requirements in this administrative regulation shall record and maintain the following information as applicable:

(a) Documentation for each cover installed on a tank in accordance with the requirements of Section 4(2)(b) or (c) of this administrative regulation that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in Section 11(3) of 401 KAR 35:281.

(b) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of Section 5(3) of this administrative regulation that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in Section 6(5) of 401 KAR 35:281.

(c) Documentation for each enclosure used to control air emissions from containers in accordance with the requirements of Section 6(2)(b)1 of this administrative regulation that includes information prepared by the owner or operator or provided by the manufacturer or vendor describing the enclosure design, and certification by the owner or operator that the enclosure meets the specifications listed in Section 6(2)(b)2 of this administrative regulation.

(d) Documentation for each closed-vent system and control device installed in accordance with the requirements of Section 7 of this administrative regulation that includes:

- 1. Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in subparagraph 2 of this paragraph or by performance tests as specified in subparagraph 3 of this paragraph when the tank, surface impoundment, or container is or would be operating at capacity or the

highest level reasonably expected to occur.

2. If a design analysis is used, then design documentation as specified in Section 6(2)(d) of 401 KAR 34:275. The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with Section 6(2)(d)3 of 401 KAR 34:275 and certification by the owner or operator that the control equipment meets the applicable specifications.

3. If performance tests are used, then a performance test plan as specified in Section 6(2)(c) of 401 KAR 34:275 and all test results.

4. Information as required by Section 6(3)(a) and (b) of 401 KAR 34:275.

(e) Records for all Method 27 tests of 40 CFR Part 60, Appendix A, performed by the owner or operator for each container used to meet the requirements of Section 6(2)(a)3 of this administrative regulation.

(f) Records for all visual inspections conducted in accordance with the requirements of Section 8 of this administrative regulation.

(g) Records for all monitoring for detectable organic emissions conducted in accordance with the requirements of Section 8 of this administrative regulation.

(h) Records of the date of each attempt to repair a leak, repair methods applied, and the date of successful repair.

(i) Records for all continuous monitoring conducted in accordance with the requirements of Section 8 of this administrative regulation.

(j) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Section 7(3)(c)2 of this administrative regulation.

(k) Records for all inspections of each cover installed on a tank in accordance with the requirements of Section 4(2)(b) or (c) of this administrative regulation that includes information as listed in Section 11(3) of this administrative regulation.

(2) An owner or operator electing to use air emission controls for a tank in accordance with the conditions specified in Section 4(3) of this administrative regulation shall record the following information:

(a) Date and time each waste sample is collected for direct measurement of maximum organic vapor pressure in accordance with Section 3(3) of this administrative regulation.

(b) Results of each determination of the maximum organic vapor pressure of the waste in a tank performed in accordance with Section 3(3) of this administrative regulation.

(c) Records specifying the tank dimensions and design capacity.

(3) An owner or operator electing to use air emission controls for a tank in accordance with the requirements of Section 11 of this administrative regulation shall record the information required by Section 11(3) of this administrative regulation.

(4) An owner or operator electing not to use air emission controls for a particular tank, surface impoundment, or container subject to this administrative regulation in accordance with the conditions specified in Section 2(3) of this administrative regulation shall record the information used by the owner or operator for each waste determination (for example, test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of Section 3 of this administrative regulation.

(5) An owner or operator electing to comply with requirements in accordance with Section 2(3)(b)5 or 6 of this administrative regulation shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(6) An owner or operator designating a cover as unsafe to inspect and monitor pursuant to Section 9(6)(e) of 401 KAR 35:281 or difficult to inspect and monitor pursuant to Section 9(6)(f) of 401 KAR 35:281 shall record in a log that is kept in the facility operating record the following information:

(a) A list of identification numbers for tanks with covers that are

designated as unsafe to inspect and monitor in accordance with the requirements of Section 9(6)(e) of 401 KAR 35:281, an explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(b) A list of identification numbers for tanks with covers that are designated as difficult to inspect and monitor in accordance with the requirements of Section 9(6)(f) of 401 KAR 35:281, an explanation for each cover stating why the cover is difficult to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(7) All records required by subsections (1) through (6) of this section except as required in subsections (1)(a) through (d) of this section shall be maintained in the operating record for a minimum of three (3) years. All records required by subsection (1)(a) through (d) of this section shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service.

(8) The owner or operator of a facility that is subject to this administrative regulation and to the control device standards in 40 CFR Part 60, Subpart VV or 40 CFR Part 61, Subpart V may elect to demonstrate compliance with the applicable sections of this administrative regulation by documentation either pursuant to this administrative regulation, or pursuant to the provisions of 40 CFR Part 60, Subpart VV or 40 CFR Part 61, Subpart V, to the extent that the documentation required by 40 CFR Parts 60 or 61 duplicates the documentation required by this section.

(9) For each tank or container not using air emission controls specified in Sections 4 through 7 of this administrative regulation in accordance with the conditions specified in Section 1(4) of this administrative regulation, the owner or operator shall record and maintain the following information:

(a) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in Section 1(4)(a) of this administrative regulation.

(b) A description of how the hazardous waste containing the organic peroxide compounds identified in paragraph (a) of this subsection are managed at the facility in tanks and containers. This description shall include:

1. For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: a facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

2. For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: a facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(c) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in subsection (9)(a) of this section in the tanks and containers as described in subsection (9)(b) of this section would create an undue safety hazard if the air emission controls, as required under Sections 4 through 7 of this administrative regulation, are installed and operated on these hazardous waste management units. The explanation shall include the following information:

1. For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: how use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under Section 4(7) of this administrative regulation, will not address those situations in which evacuation of tanks equipped with these air emission controls

is necessary and consistent with good engineering and safety practices for handling organic peroxides.

2. For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: how use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under Section 6(4) of this administrative regulation, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

Section 10. Reporting Requirements. (1) Each owner or operator managing hazardous wastes in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of Section 2(3) of this administrative regulation shall report to the cabinet each occurrence when hazardous waste is placed in the hazardous waste management unit in noncompliance with the conditions specified in Section 2(3)(a) or (b) of this administrative regulation, as applicable. Examples of such occurrences include placing in the hazardous waste management unit a hazardous waste having an average VO concentration equal to or greater than 100 ppmw at the point of waste origination; or placing in the hazardous waste management unit a treated hazardous waste that fails to meet the applicable conditions specified in Section 2(3)(b)1 through 5 of this administrative regulation. The owner or operator shall submit a written report within fifteen (15) calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent reoccurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(2) Each owner or operator using air emission controls on a tank in accordance with the requirements Section 4(3) of this administrative regulation shall report to the cabinet each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in Section 4(3)(a) through (d) of this administrative regulation. The owner or operator shall submit a written report within fifteen (15) calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent reoccurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(3) Each owner or operator using a control device in accordance with the requirements of Section 7 of this administrative regulation shall submit a semiannual written report to the cabinet excepted as provided for in subsection (4) of this section. The report shall describe each occurrence during the previous six (6) month period when a control device is operated continuously for twenty-four (24) hours or longer in noncompliance with the applicable operating values defined in Section 6(3)(d) of 401 KAR 35:275 or when a flare is operated with visible emissions as defined in Section 4(4) of 401 KAR 35:275. The written report shall include the EPA identification number, facility name and address, and an explanation why the control device could not be returned to compliance within 24 hours, and actions taken to correct the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(4) A report to the cabinet in accordance with the requirements of subsection(3) of this section is not required for a six (6) month period during which all control devices subject to this administrative

regulation are operated by the owner or operator such that during no period of twenty-four (24) hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in Section 6(3)(d) of 401 KAR 34:275 or a flare operate with visible emissions as defined in Section 4(4) of 401 KAR 34:275.

Section 11. Alternative Control Requirements for Tanks. (1) This section applies to owners and operators of tanks electing to comply with Section 4(2)(b) or (c) of this administrative regulation.

(a) The owner or operator electing to comply with Section 4(2)(b) of this administrative regulation shall design, install, operate, and maintain a fixed roof and internal floating roof that meet the requirements specified in Section 11(1)(a)1 through 9 of 401 KAR 35:281.

(b) The owner or operator electing to comply with Section 4(2)(c) of this administrative regulation shall design, install, operate, and maintain an external floating roof that meets the requirements specified in Section 11(1)(b)1 through 3 of 401 KAR 35:281.

(2) The owner or operator shall inspect and monitor the control equipment in accordance with the following requirements:

(a) For a tank equipped with a fixed roof and internal floating roof in accordance with the requirements of subsection (1)(a) of this section, the owner or operator shall perform the inspection and monitoring requirements specified in Section 11(2)(a) of 401 KAR 35:281.

(b) For a tank equipped with an external floating roof in accordance with the requirements of subsection (1)(b) of this section, the owner or operator shall perform the inspection and monitoring requirements specified in Section 11(2)(b) of 401 KAR 35:281.

(3) The owner or operator shall record the following information in the operating record in accordance with the requirements of Section 9(1)(a) and (k) of this administrative regulation:

(a) For a tank equipped with a fixed roof and internal floating roof in accordance with the requirements of subsection (1)(a) of this section, the owner or operator shall record the information listed in Section 11(3)(a) of 401 KAR 35:281.

(b) For a tank equipped with an external floating roof in accordance with the requirements of subsection (1)(b) of this section, the owner or operator shall record the information listed in Section 11(3)(b) of 401 KAR 35:281.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects owners and operators of hazardous waste facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

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1. First year following implementation: No public comments were received.
2. Second and subsequent years: No public comments were received.
3. Effects on the promulgating administrative body:
 - a. Direct and indirect costs or savings:
 1. First year: There will be no costs or savings.
 2. Continuing costs or savings: There will be no extra costs or savings.
 3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.
 - b. Reporting and paperwork requirements: There are not any additional paperwork or reporting requirements.
4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.
5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are anticipated to be used for the implementation and enforcement of the regulation.
6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:
 - a. Geographical area in which administrative regulation will be implemented: No public comments were received.
 - b. Kentucky: No public comments were received.
7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. This administrative regulation is consistent with federal standards.
8. Assessment of expected benefits of the administrative regulation: This administrative regulation provides consistency with federal standards.
 - 9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will improve public health and the environment across the commonwealth.
 - b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur without the implementation of this regulation.
 - c. If detrimental effect would result, explain detrimental effect: The air emissions subject to this regulation could harm human health and the environment without the implementation of this regulation.
10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.
 - a. Necessity of proposed regulation if in conflict: Not applicable.
 - b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
11. Any additional information or comments: There are no additional comments.
12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies to owners and operators of hazardous waste facilities that treat, store, or dispose of hazardous waste and is consistent with federal standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.
2. State compliance standards: The proposed regulation adopts changes that apply to air emission standards for tanks, surface impoundments, and containers. The regulation is necessary to maintain consistency between state and federal programs. The regulation clarifies the applicability of the standards. In addition, the

regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that stores, treats, or disposes of hazardous waste in tanks, surface impoundments, or containers.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 35:005. Definitions Related to 401 KAR Chapter 35.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10, 265.141, 265.1031, 265.1051, 265.1081

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

NECESSITY, FUNCTION, AND CONFORMITY: This chapter implements provisions of KRS 224.46-510 and establishes the general provisions applicable to generators of hazardous waste. This administrative regulation defines essential terms that are used in this chapter. The majority of terms defined in this administrative regulation are equivalent to federal terms contained in 40 CFR Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some

terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 35 shall have the meanings given in this section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "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.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed;

however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "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.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "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.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; or ~~and~~

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that

acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" 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, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "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.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or

over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure [and postclosure] cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) ~~"Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).~~

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(59) ~~(60)~~ "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(60) ~~(61)~~ "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(61) ~~(62)~~ "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266; and

(d) That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(62) ~~(63)~~ "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only

accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63) ~~(64)~~ "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(64) ~~(65)~~ "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65) ~~(66)~~ "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 (for example, transport vehicle) and a boiler or industrial furnace.

(66) "Disposal" shall have the meaning specified in KRS 224.01-010.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) ~~"Disposal" shall have the meaning specified in KRS 224.01-010.~~

(69) "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.

(69) ~~(70)~~ "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.

(70) ~~(71)~~ "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(71) ~~(72)~~ "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.

(72) ~~(73)~~ "Draft permit" shall have the same meaning as "proposed permit".

(73) ~~(74)~~ "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(74) ~~(75)~~ "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(75) ~~(76)~~ "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(76) ~~(77)~~ "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(77) ~~(78)~~ "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(78) ~~(79)~~ "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered

in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(79) [(80)] "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) [(81)] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) [(82)] "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(82) [(83)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(83) [(84)] "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 401 KAR 34:275. [this administrative regulation.]

(84) [(85)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85) [(86)] "Existing" 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.

(86) [(87)] "Existing component" shall have the same meaning as "existing tank system."

(87) [(88)] "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) [(89)] "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun;

or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(89) [(90)] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(90) [(91)] "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation 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 site or installation of the tank system to be completed within a reasonable time.

(91) [(92)] "External floating roof" means a pontoon or double-

deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(92) [(93)] "Face amount" means the total amount the insurer is obligated to pay under the policy.

(93) [(94)] "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example [e-g-], one (1) or more landfills, surface impoundments, or combinations of them.)

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(94) "Facility mailing list" means the mailing list for a facility maintained in accordance with Section 7(3)(a)4c of 401 KAR 38:050.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "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.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "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.

(109) "Free liquids" means liquids which readily separate from the

solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

~~(113) ["Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.~~

~~(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.~~

(114) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

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

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01-010.

(117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

(118) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(119) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

~~(120) "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.~~

~~(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.]~~

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste

management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(122) "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.

(123) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(124) ~~(122)~~ "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

~~(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.]~~

(125) ~~(124)~~ "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) ~~(125)~~ "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(127) ~~(126)~~ "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) ~~(127)~~ "In existence" shall have the same meaning as "existing."

(129) ~~(128)~~ "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) ~~(129)~~ "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) ~~(130)~~ "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.

(132) ~~(131)~~ "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) ~~(132)~~ "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) ~~(133)~~ "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(135) ~~(134)~~ "In vapor service" shall have the same meaning as "in gas service".

(136) ~~(135)~~ "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall

is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) [(136)] "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(138) [(137)] "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) [(138)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) [(139)] "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) [(140)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(142) [(141)] "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (a) Cement kilns;
- (b) Lime kilns;
- (c) Aggregate kilns;
- (d) Phosphate kilns;
- (e) Coke ovens;
- (f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

- (h) Titanium dioxide chloride process oxidation reactors;
- (i) Methane reforming furnaces;
- (j) Pulp liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(143) [(142)] "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(144) [(143)] "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(145) [(144)] "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(146) [(145)] "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(147) [(146)] "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(148) [(147)] "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(149) [(148)] "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(150) [(149)] "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

(150) [(150)] "IUC well" means a ~~underground injection control well as provided in 40 CFR Part 144.~~

(151) [(151)] "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) [(152)] "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) [(153)] "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) [(154)] "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) [(155)] "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) [(156)] "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) [(157)] "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(158) [(158)] "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(159) [(159)] "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(159) [(159)] "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) [(160)] "Leachate" means any liquid including any suspended

components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "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.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "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.

(169) "Manifest" shall have the meaning specified in KRS 224.01-010.

(170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

~~[(170) "Manifest" shall have the meaning specified in KRS 224.01-010.]~~

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

~~[(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.]~~

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(180) "New tank component" shall have the same meaning as "new tank system."

(181) ~~[(180)]~~ "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

~~[(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.]~~

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device

to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "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.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

~~[(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit by rule, registered permit by rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.]~~

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the

requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for hazardous [solid] waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in 401 KAR Chapter 31 [40 CFR Part 264].

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

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

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "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.

(220) "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.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes 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 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "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.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

~~[(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.]~~

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "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.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "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.

(264) "Storage" shall have the meaning specified in KRS 224.01-010.

(265) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(266) [(265)] "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

[(266)] "Storage" shall have the meaning specified in KRS 224.01-010.]

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "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.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

[(278)] "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").]

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs 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.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means :

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment" shall have the meaning specified in KRS 224.01-010.

(288) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(289) [(288)] "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

[(289) "Treatment" shall have the meaning specified in KRS 224.01-010.]

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 CFR Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(293) [(292)] "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(294) [(293)] "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) [(294)] "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) [(295)] "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

(a) Batteries as described in Section 2 of 401 KAR 43:010;

(b) Pesticides as described in Section 3 of 401 KAR 43:010;

(c) Thermostats as described in Section 4 of 401 KAR 43:010; and

(d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) [(296)] "Universal waste handler":

(a) Means:

1. A generator of universal waste; or

2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) [(297)] "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) [(298)] "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) [(299)] "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) [(300)] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302) [(301)] "Used oil" shall have the same meaning as KRS 224.50-545.

(303) [(302)] "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) [(303)] "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.

(305) [(304)] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) [(305)] "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) [(306)] "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.

(308) [(307)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) [(308)] "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) [(309)] "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" shall have the meaning specified in KRS 224.01-010.

(312) [(310)] "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) [(314)] "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314) [(312)] "Waste pile" shall have the same meaning as "pile".

(315) [(313)] "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010) [Third Edition, September 1986, as amended by Update 1, November 15, 1992 (incorporated by reference refer to § 260.11 of this chapter)]. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

[(314)] "Waste" shall have the meaning specified in KRS 224.01-040.]

(316) [(315)] "Wastewaters" means 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:

(a) 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 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

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

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

(317) [(316)] "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) [(317)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

[(318)] "Water" or "Waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.]

(320) [(319)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or

tubing to prevent the earth from caving in.

(321) [(320)] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(322) [(321)] "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) [(322)] "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) [(323)] "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| Am. | Amended |
|-----------------|---|
| C | Corrosive waste |
| CAA | Clean Air Act, as amended |
| CFR | Code of Federal Regulations |
| cm | Centimeter |
| cm ² | Centimeter squared |
| CO | Carbon monoxide |
| CO ₂ | Carbon dioxide |
| CWA | Clean Water Act, as amended |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| DOT | United States Department of Transportation |
| DRE | Destruction and removal efficiency |
| E | Explosive waste |
| eff. | Effective |
| EPA | United States Environmental Protection Agency |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FIA | Federal Insurance Administration |
| FR | Federal Register |
| H | Acutely hazardous waste |
| ha | Hectare |
| HTMR | High temperature metals recovery |
| HSWA | Hazardous and Solid Waste Amendments of 1994 |
| I | Ignitable waste |
| KAR | Kentucky Administrative Regulation |
| kg | Kilogram |
| KPDES | Kentucky Pollution Discharge Elimination System |
| KRS | Kentucky Revised Statute |
| Ky.R. | Administrative Register of Kentucky |
| l | Liter |
| LC | Lethal concentration |
| LD | Lethal dose |
| ml | Milliliter |
| mm | Millimeter |
| N | Normal |
| NESHAPS | National Emissions Standards for Hazardous Air Pollutants |
| NPDES | National Pollutant and Discharge Elimination System |
| PCB | Polychlorinated biphenyl |

ADMINISTRATIVE REGISTER - 2064

| | |
|-------------|---|
| pCi/l | Picocuries per liter |
| PHC | Principal hazardous constituent |
| Permit POHC | Permitted principal organic hazardous constituent |
| PM | Particulate matter |
| POHC | Principal organic hazardous constituent |
| ppm | parts per million |
| Trial POHC | Trial burn principal organic hazardous constituent |
| POTW | Publicly owned treatment works |
| PSD | Prevention of significant deterioration |
| psi | Pounds per square inch |
| psig | Pounds per square inch gauge |
| R | Reactive waste |
| RCRA | Resource Conservation and Recovery Act, as amended |
| SDWA | Safe Drinking Water Act, as amended |
| SEC | Securities and Exchange Commission |
| SIC | Standard Industrial Classification Code |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |
| T | Toxic waste |
| UIC | Underground Injection Control |
| UICP | Underground Injection Control Program |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| USGS | United States Geological Survey |
| USPS | United States Postal Service |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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. If yes, complete questions 2-4.

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 35. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 35, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

401 KAR 35:050. Manifest system, recordkeeping and reporting (IS).

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99, 40 CFR 265 Subpart E

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-520 and to establish the manifest system, recordkeeping and reporting requirements for facilities. **This administrative regulation is equivalent to federal standards established in 40 CFR 265 Subpart E except for Section 4(2)(i) of this administrative regulation, which deletes unnecessary federal language; and Section 6 of this administrative regulation, which requires annual reporting to track transportation of manifested hazardous waste in compliance with KRS 224 Subchapter 46.**

Section 1. Applicability. The requirements in this administrative regulation apply to owners and operators of both on-site and off-site facilities, except as Section 1 of 401 KAR 35:010 provides otherwise. Sections 2, 3 and 7 of this administrative regulation do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

Section 2. Use of Manifest System. (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator (or his agent) shall:

(a) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(b) Note any significant discrepancies in the manifest (as defined in Section 3(1) of this administrative regulation) on each copy of the manifest;

(c) Immediately give the transporter at least one (1) copy of the signed manifest;

(d) Within thirty (30) days after the delivery, send a copy of the manifest to the generator; and

(e) Retain at the facility a copy of each manifest for at least three (3) years from the date of delivery.

(2) If a facility receives from a rail or water (bulk shipment) transporter hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification and signatures), the owner or operator (or his agent) shall:

(a) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(b) Note any significant discrepancies (as defined in Section 3(1) of this administrative regulation) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

(c) Immediately give the rail or water (bulk shipment) transporter at least one (1) copy of the manifest or shipping paper (if the manifest has not been received);

(d) Within thirty (30) days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within thirty (30) days after delivery, the owner or operator (or his agent) shall send a copy of the shipping paper signed and dated to the generator; and

(e) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three (3) years from the date of delivery.

(3) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of the facility shall comply with the requirements of 401 KAR Chapter 32.

Section 3. Manifest Discrepancies. (1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives.

(a) Significant discrepancies in quantity are:

1. For bulk waste, variations greater than ten (10) percent in weight; and

2. For batch waste, any variation in piece count, such as a discrepancy of one (1) drum in a truckload.

(b) Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(2) Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (with telephone conversations). If the discrepancy is not resolved within fifteen (15) days after receiving the waste, the owner or operator shall immediately submit to the cabinet a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

Section 4. Operating Record. (1) The owner or operator shall keep a written operating record at his facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(a) A description and the quantity of each hazardous waste received, and the method and date of its treatment, storage or disposal at the facility as required by 401 KAR 35:290;

(b) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall be recorded on a map or diagram of each cell or disposal area. For all facilities, this information shall include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest (see Section 9 of 401 KAR 35:070, Section 6 of 401 KAR 35:220 and Section 3 of 401 KAR 35:230 for related requirements);

(c) Records and results of waste analyses, **waste determi-**

nations, and trial tests performed as specified in Section 4 of 401 KAR 35:020, Section 4 of 401 KAR 35:190, Section 4 of 401 KAR 35:200, Section 3 of 401 KAR 35:210, Section 3 of 401 KAR 35:220, Section 7 of 401 KAR 35:230, Section 2 of 401 KAR 35:240, Section 3 of 401 KAR 35:250, Section 3 of 401 KAR 35:260, Section 4 of 401 KAR 35:281 ~~[and Sections 4(1) and 7 of 401 KAR 37:010]~~, Section 5 of 401 KAR 35:275, ~~[and]~~ Section 14 of 401 KAR 35:280, and Sections 4(1) and 7 of 401 KAR 37:010;

(d) Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 7(10) of 401 KAR 35:040;

(e) Records and results of inspections as required by Section 6(4) of 401 KAR 35:020 (except these data need be kept only three (3) years);

(f) Monitoring, testing, or analytical data when ~~[and corrective action where]~~ required by 401 KAR 35:060; Section 10 of 401 KAR 35:020; Sections 2, 4, and 6 of 401 KAR 35:190; Sections 2, 3, and 5 of 401 KAR 35:200; Sections 9, 10, and 11 of 401 KAR 35:210; Sections 4, 5 and 7(4)(a) of 401 KAR 35:220; Sections 2, 11, and 12 of 401 KAR 35:230; Section 4 of 401 KAR 35:240; and Section 4 of 401 KAR 35:250; Sections 5(3) to (6) and 6 of 401 KAR 35:275; ~~[and]~~ Sections 14(4) to (9) and 15 of 401 KAR 35:280; and Sections 9, 10, and 11 of 401 KAR 35:281;

(g) All closure cost estimates under Section 1 of 401 KAR 35:090 and for disposal facilities, all postclosure cost estimates under Section 1 of 401 KAR 35:100;

(h) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Section 5 of 401 KAR 37:010, monitoring data required pursuant to a petition under 401 KAR 37:010, Section 6, or a certification under 401 KAR 37:010, Section 8, and the applicable notice required of a generator under 401 KAR 37:010, Section 7(1);

(i) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010;

(j) For an on-site treatment facility, the information contained in the notice and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010;

(k) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or owner or operator of a treatment facility under Section 7 or 8 of 401 KAR 37:010;

(l) For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator under Section 7 or 8 of 401 KAR 37:010;

(m) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or the owner or operator under 401 KAR 37:010, Section 7 or 8; and

(n) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required of the generator or the owner or operator of a treatment facility under Section 7 or 8 of 401 KAR 37:010.

Section 5. Availability, Retention, and Disposition of Records. (1) All records, including plans, required under this chapter shall be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee or representative of the cabinet who is duly designated by the secretary.

(2) The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the site or facility or as requested by the cabinet.

(3) A copy of records of waste disposal locations and quantities

under Section 4(2)(b) of this administrative regulation shall be submitted to the cabinet and local land authority upon closure of the facility (see Section 9 of 401 KAR 35:070).

Section 6. Annual Report. The owner or operator shall prepare and submit a single copy of the Hazardous Waste Annual Report, DEP Form 7072-91, incorporated by reference in Section 5 of 401 KAR 32:040, [an annual report] to the cabinet by March 1 of each year. ~~The Hazardous Waste Annual Report [report form and instructions designated by the cabinet shall be used for this report. The annual report]~~ shall cover site or facility activities during the previous calendar year, ~~[and shall include at a minimum the following information:~~

~~(1) The EPA identification number, name and address of the facility;~~

~~(2) The calendar year covered by the report;~~

~~(3) For off-site facilities, the name and EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the name, number and address of the foreign generator;~~

~~(4) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;~~

~~(5) The method of treatment, storage or disposal for each hazardous waste;~~

~~(6) Monitoring data under Section 5(1)(b)2 and 3, and (2)(b) of 401 KAR 35:060, where required;~~

~~(7) Information on transportation, the use of the manifest, and other information from the manifest, as applicable;~~

~~(8) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;~~

~~(9) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and~~

~~(10) The certification signed by the owner or operator of the facility or his authorized representative.]~~

Section 7. Unmanifested Waste Report. If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in Section 1(5)(b) of 401 KAR 33:020, and if the waste is not excluded from the manifest requirement by Section 5 of 401 KAR 31:010, then the owner or operator shall prepare and submit a single copy of a report to the cabinet within fifteen (15) days after receiving the waste. The unmanifested waste report shall be submitted on a form approved by the cabinet. Such report shall be designated "Unmanifested Waste Report" and shall include the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

Section 8. Additional Reports. In addition to submitting the annual report and unmanifested waste reports described in Sections 6 and

7 of this administrative regulation, the owner or operator shall also report to the cabinet:

- (1) Releases, fires and explosions as specified in Section 7(10) of 401 KAR 35:040;
- (2) Groundwater contamination and monitoring data as specified in Sections 4 and 5 of 401 KAR 35:060;
- (3) Facility closure as specified in Section 6 of 401 KAR 35:070; and
- (4) As otherwise required by 401 KAR 35:275, 401 KAR 35:280, 401 KAR 35:281, and 401 KAR 35:290.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners and operators of on-site and off-site hazardous waste interim status facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff of the agency will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will not be any extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are anticipated to be used for the implementation and enforcement of the regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: The expected benefit is consistency with the current

federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The public health and environmental welfare will improve across the commonwealth with the implementation of this regulation

b. State whether a detrimental effect on the environment and public health would result if not implemented: There would be detrimental effects if this regulation is not implemented.

c. If detrimental effect would result, explain detrimental effect: Human health and the environment could be threatened without the implementation of this regulation.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, duplicate, or overlap this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was applied. This administrative regulation applies to on-site and off-site hazardous waste interim status facilities across the commonwealth, consistent with federal standards, to protect the environment and human health. Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes that apply to on-site and off-site hazardous waste interim status sites. The changes are necessary to maintain consistency between state and federal programs. Additions and exclusions have been made to clarify the applicability of the standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages on-site and off-site hazardous waste interim status facilities.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of

all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 35:120. Liability requirements (IS).

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.99, 40 CFR 265.147

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

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-505, 224.46-520, and 224.46-530 relative to liability requirements for hazardous waste sites or facilities qualifying for interim status. This administrative regulation is equivalent to federal standards established in 40 CFR 265.147 except for: Section 2(1)(b) of this administrative regulation, which adds a reference to applicable statutory requirements; Sections 1(7) and 2(8) of this administrative regulation, which provide an historical reference to determine prior compliance; Section 5 of this administrative regulation, which is modified to maintain consistency with KRS 224.46-520; and this administrative regulation provides state forms equivalent to federal mechanisms for financial assurance.

Section 1. Coverage for Sudden Accidental Occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1,000,000 per occurrence with an annual aggregate of at least \$2,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsections (1) to (6) of this section.

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The Hazardous Waste Facility Liability Endorsement shall be executed on DEP Form 6035K ~~(the form)~~ incorporated by reference in Section 4 of 401 KAR 34:080. The Certificate of Liability Insurance shall be on DEP Form 6035L ~~(the form)~~ incorporated by reference in Section 4 of 401 KAR 34:080. The owner or operator shall submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet. If request-

ed by the cabinet, the owner or operator shall provide an originally signed duplicate of the insurance policy.

(b) Each primary insurance policy shall be issued by an insurer which, at a minimum, is authorized to transact primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall be issued by an insurer which, at a minimum, is licensed to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator may meet the requirements of this administrative regulation by passing a financial test or using the corporate guarantee for liability coverage as specified in Sections 6 and 7 of this administrative regulation.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in Section 8 of this administrative regulation.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in Section 9 of this administrative regulation.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in Section 10 of this administrative regulation.

(6) An owner or operator may demonstrate the required liability coverage through use of combinations of the financial test, insurance, the corporate guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subsection, the owner or operator shall specify at least one (1) such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the cabinet in writing within thirty (30) days whenever:

(a) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized by subsections (1) to (6) of this section; [for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section;]

(b) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subsections (1) through (6) of this section; or [The amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by subsections (1) to (6) of this section is reduced; or]

(c) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subsections (1) to (6) of this section.

(8) Notwithstanding any other provisions of this chapter, an owner or operator using liability insurance to satisfy the requirements of this administrative regulation may use, until October 16, 1982, a hazardous waste facility endorsement or certificate of liability insurance that does not certify that the insurer is licensed to transact the business of insurance or eligible as an excess or surplus lines insurer, in one (1) or more states.

Section 2. Coverage for Nonsudden Accidental Occurrences. An owner or operator of a surface impoundment, landfill, facility for land

disposal as specified in KRS 224.01-010, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain additional liability coverage for nonsudden accidental occurrences in the amount of at least \$3,000,000 per occurrence with an annual aggregate of at least \$6,000,000, exclusive of legal defense costs. An owner or operator who is required to meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in subsections (1) to (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this section.

(a) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The Hazardous Waste Facility Liability Endorsement shall be executed on DEP Form 6035K ~~(the form)~~ incorporated by reference in Section 4 of 401 KAR 34:080. The Certificate of Liability Insurance shall be executed ~~(in accordance with 401 KAR 34:176)~~ on DEP 6035L ~~(the form)~~ incorporated by reference in Section 4 of 401 KAR 34:080. The owner or operator shall submit an originally signed duplicate of the endorsement or the certificate of insurance to the cabinet. If requested by the cabinet, the owner or operator shall provide an originally signed duplicate of the insurance policy.

(b) Each primary insurance policy shall be issued by an insurer which, at a minimum is authorized to transact the business of primary insurance in Kentucky except as KRS 304.11-030 provides otherwise. Each excess insurance policy shall be issued by an insurer which, at a minimum is authorized to provide insurance as an excess or surplus lines insurer in one (1) state.

(2) An owner or operator shall notify the cabinet in writing within thirty (30) days whenever:

(a) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized by subsections (1) to (6) of this section; [A claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or against an instrument providing financial assurance for liability coverage under this section;]

(b) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subsections (1) through (6) of this section; or [The amount of financial assurance for liability coverage under this section, provided by a financial instrument authorized by this subsection, is reduced; or]

(c) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or ~~against~~ an instrument that is providing financial assurance for liability coverage under subsections (1) to (6) of this section.

(3) An owner or operator may meet the requirements of this administrative regulation by passing a financial test, or using the corporate guarantee for liability coverage as specified in Sections 6 and 7 of this administrative regulation.

(4) An owner or operator may meet the requirements of this

section by obtaining a letter of credit for liability coverage as specified in Section 8 of this administrative regulation.

(5) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in Section 9 of this administrative regulation.

(6) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in Section 10 of this administrative regulation.

(7) An owner or operator may demonstrate the required liability coverage through use of combinations of the financial test, insurance, the corporate guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by this section. **If the owner or operator demonstrates the required coverage through the use of a combination of financial assurance under this section, the owner or operator shall specify at least one (1) such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.**

(8) The required liability coverage for nonsudden accidental occurrences shall be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding October 8, 1982, shall determine which of the dates apply. If the owner and operator of a facility are two (2) different parties, or if there is more than one (1) owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues shall determine the date by which the coverage shall be demonstrated. The dates are as follows:

(a) For an owner or operator with sales or revenues totaling \$10,000,000 or more, February 24, 1983.

(b) For an owner or operator with sales or revenues greater than \$5,000,000 but less than \$10,000,000, February 24, 1984.

(c) For all other owners or operators, February 24, 1985.

(9) Notwithstanding any other provisions of this chapter, an owner or operator using liability insurance to satisfy the requirements of this administrative regulation may use, until October 16, 1982, a hazardous waste facility endorsement or certificate of liability insurance that does not certify that the insurer is licensed to transact the business of insurance or eligible as an excess or surplus lines insurer, in one (1) or more states.

Section 3. Adjustments by the Cabinet. If the cabinet determines that the levels of financial responsibility required by Sections 1 and 2 of this administrative regulation are not consistent with the degree and duration of risks associated with treatment, storage, or disposal at any facility or group of facilities, the cabinet may increase the level of financial responsibility required under Sections 1 and 2 of this administrative regulation as may be necessary to protect human health and the environment. This adjusted level shall be based on the cabinet's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of facilities. In addition, if the cabinet determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the cabinet may require that the owner or operator of the facility comply with Section 2 of this administrative regulation. An owner or operator shall furnish to the cabinet, within a reasonable time, any information which the cabinet requests to determine whether cause exists for such adjustments of the level or type of coverage. Any adjustment of the level of required coverage for a facility that has a permit shall be treated as a permit modification under Section 2(1)(e) of 401 KAR 38:040 and subject to the procedures of Section 2 of 401 KAR 38:050. Notwithstanding any other provision, the cabinet may hold a public hearing at its discretion or whenever the cabinet finds, on the

basis of requests for a public hearing, a significant degree of public interest in a tentative decision to adjust the level or type of required coverage.

Section 4. Request for a Variance. If an owner or operator can demonstrate to the satisfaction of the cabinet that the increased level of financial responsibility required by Section 1 or 2 of this administrative regulation is not consistent with the degree and duration of risks associated with the treatment, storage, or disposal at each facility or group of facilities, the owner or operator may obtain a variance from the cabinet. The request for a variance shall be submitted to the cabinet in writing. The cabinet shall not grant any requests for a variance which seek to decrease the level of financial responsibility below the minimums required by KRS 224.46-520(3)(c). If granted, the variance shall take the form of an adjusted level of required liability coverage, such level to be based on the cabinet's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of facilities. The cabinet may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the cabinet to determine a level of financial responsibility other than that required by Sections 1 and 2 of this administrative regulation. Any request for a variance for a permitted facility shall be treated as a request for a permit modification under Section 2 of 401 KAR 38:040 and subject to the procedures of Section 2 of 401 KAR 38:050. Notwithstanding any other provision, the cabinet may hold a public hearing at its discretion or whenever the cabinet finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to grant a variance.

Section 5. Period of Coverage. An owner or operator shall continuously provide liability coverage for a facility as required by this administrative regulation until certification of termination pursuant to the requirements of KRS 224.46-520.

Section 6. Liability Self-insurance. (1) An owner or operator may satisfy the requirements of this administrative regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall demonstrate that the level of self-insurance does not exceed ten (10) percent of equity and shall meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The owner or operator shall have:

1. Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test; and

2. Tangible net worth of at least \$10 million; and

3. Assets in the United States amounting to either, at least, ninety (90) percent of his total assets or, at least six (6) times the amount of liability coverage to be demonstrated by this test.

(b) The owner or operator shall have:

1. A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth of at least \$10 million; and

3. Tangible net worth at least six (6) times the amount of the liability coverage to be demonstrated by this test; and

4. Assets located in the United States amounting to either, at least, ninety (90) percent of his total assets or, at least, six (6) times the amount of the liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (1) of this section refers to the annual aggregate amounts for which coverage is required under Sections 1 and 2 of this administrative regulation.

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three (3) items to the cabinet:

(a) A letter signed by the owner's or operator's chief financial officer and executed on the form entitled Letter from Chief Financial

Officer to Demonstrate Liability Coverage or to Demonstrate Liability Coverage and Assurance of Closure or Postclosure Care, DEP Form 6035G, incorporated by reference in Section 4 of 401 KAR 34:080. If an owner or operator is using the financial test to demonstrate both liability coverage and assurance for closure or postclosure care (as specified by Section 8 of 401 KAR 34:090, Section 8 of 401 KAR 34:100, Section 7 of 401 KAR 35:090, and Section 7 of 401 KAR 35:100), he shall submit the letter on the form entitled Letter from Chief Financial Officer to Demonstrate Liability Coverage or to Demonstrate Liability Coverage and Assurance of Closure or Postclosure Care, DEP Form 6035G, incorporated by reference in Section 4 of 401 KAR 34:080, to cover both forms for financial responsibility a separate letter is not required;

(b) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

2. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(d) The owner or operator may obtain a one (1) time extension of the time allowed for submission of the documents specified in subsection (3) of this section if the fiscal year of the owner or operator ends during the ninety (90) days prior to the effective date of this administrative regulation and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension shall end no later than ninety (90) days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer is required to send a letter to the cabinet. This letter from the chief financial officer shall:

1. Request the extension;

2. Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

3. Specify for each facility to be covered by the test the EPA identification number, name, address, the amount of liability coverage and, when applicable, current closure and postclosure cost estimates to be covered by the test;

4. Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these administrative regulations;

5. Specify the date, no later than ninety (90) days after the end of such fiscal year, when he will submit the documents specified in subsection (3) of this section; and

6. Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(4) An owner or operator of a new facility shall submit the items specified in subsection (3) of this section to the cabinet at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal.

(5) After the initial submission of items specified in subsection (3) of this section, the owner or operator shall send updated information to the cabinet within ninety (90) days after the close of each succeeding fiscal year. This information shall consist of all three (3) items specified in subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a corporate guarantee for the entire amount of required liability coverage as specified in this administrative regulation. Evidence of liability coverage [insurance] shall be submitted to the cabinet within ninety (90) days after the end

of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The cabinet may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (3) of this section. If the cabinet finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (1) of this section, the owner or operator shall provide liability insurance as specified in this administrative regulation within thirty (30) days after notification of such a finding.

(8) The cabinet may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subsection (3)(c) of this section). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The cabinet shall evaluate other qualifications on an individual basis. The owner or operator shall provide liability insurance for the entire amount of liability coverage as specified in this administrative regulation within thirty (30) days after notification of the disallowance.

Section 7. Corporate Guarantee for Liability Coverage. (1) Subject to subsection (2) of this section, an owner or operator may meet the requirements of this administrative regulation by obtaining a written guarantee, referred to as Corporate Guarantee for Liability Coverage, [hereinafter referred to as "corporate guarantee."] The guarantor shall be the direct or higher-tier parent corporation of the owner or operator a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantor shall meet the requirements for owners or operators in Section 6(1) to (7) of this administrative regulation. The Corporate Guarantee for Liability Coverage shall be executed on DEP Form 6035H2 [the form] incorporated by reference in Section 4 of 401 KAR 34:080. A certified copy of the Corporate Guarantee for Liability Coverage shall accompany the items sent to the cabinet as specified in Section 6(3) of this administrative regulation. One (1) of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter shall describe the substantial business relationship and the value received in consideration of the guarantee. The terms of the Corporate Guarantee for Liability Coverage shall provide that:

(a) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this Corporate Guarantee for Liability Coverage, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(b) The Corporate Guarantee for Liability Coverage shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the cabinet. This guarantee may not be terminated unless and until the cabinet approves alternate liability coverage complying with 401 KAR 35:120 or this administrative regulation.

(2)(a) In the case of corporations incorporated in the United States, a Corporate Guarantee for Liability Coverage may be used to satisfy the requirements of this administrative regulation only if the Attorney General or insurance commissioner of the state in which the guarantor is incorporated, each state in which a facility covered by the guarantee is located and in the state in which it has its principle place of business, have submitted a written statement to the director that a

Corporate Guarantee for Liability Coverage executed as described in this administrative regulation and is a legally valid and enforceable obligation in that state and in Kentucky.

(b) In the case of corporations incorporated outside of the United States, a Corporate Guarantee for Liability Coverage may be used to satisfy the requirements of this section only if the non-U.S. corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located, and in the state in which it has its principle place of business, and the Attorney General or insurance commissioner of each state in which a facility covered by the guarantee is located, and the state in which the guarantor corporation has its principle place of business, and the cabinet's Department of Law or the insurance commissioner of Kentucky has submitted a written statement to the cabinet that a Corporate Guarantee for Liability Coverage executed as described in this section and is a legally valid and enforceable obligation in that state and in Kentucky.

(c) A corporate guarantee may be used to satisfy the requirements of this administrative regulation only if the assets to be collected are located in the United States. Failure to provide the written statement referenced in paragraphs (a) and (b) of this subsection shall be grounds for denial of the instrument.

Section 8. Letter of Credit for Liability Coverage. (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable stand-by letter of credit that conforms to the requirements of this administrative regulation and submitting a copy of the letter of credit to the cabinet. The irrevocable standby letter of credit may be submitted on either DEP Form 6035Q or DEP 6035N. The Irrevocable Standby Letter of Credit to Demonstrate Liability Coverage, DEP Form 6035Q and the Irrevocable Standby Letter of Credit to Demonstrate Liability Coverage with Standby Trust Agreement, DEP Form 6035N are incorporated by reference in Section 4 of 401 KAR 34:080. The owner or operator may use his own document, provided the language is identical to that specified in either DEP Form 6035Q or 6035N. If the owner or operator chooses to establish a trust fund as described in subsection (4) of this section, DEP Form 6035N shall be submitted along with the standby trust agreement as specified in subsection (5) of this section.

(2) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the federal or state agency.

(3) The letter of credit shall be submitted on the form incorporated by reference in Section 4 of 401 KAR 34:080.

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(5) The standby trust shall be submitted on DEP Form 6035R entitled "Standby Trust Agreement for Letter of Credit Demonstrating Liability Coverage", [the form] incorporated by reference in Section 4 of 401 KAR 34:080.

Section 9. Surety Bond for Liability Coverage. (1) An owner or operator may satisfy the requirements of this section by obtaining a Payment Bond to Demonstrate Liability Coverage [surety bond] that conforms to the requirements of this administrative regulation and submitting a copy of the bond to the cabinet.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The Payment Bond to Demonstrate Liability Coverage [letter

of credit] shall be submitted on the form incorporated by reference in Section 4 of 401 KAR 34:080.

(4) A Payment Bond to Demonstrate Liability Coverage [surety bond] may be used to satisfy the requirements of this section only if the attorney general or insurance commissioners of the state in which the surety is incorporated, and each state in which a facility covered by the Payment Bond to Demonstrate Liability Coverage [surety bond] is located have submitted a written statement to the cabinet that a Payment Bond to Demonstrate Liability Coverage [surety bond] executed on DEP Form 6035O [the form] incorporated by reference in Section 4 of 401 KAR 34:080 is a legally valid and enforceable obligation in that state.

Section 10. Trust Fund for Liability Coverage. (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this administrative regulation and submitting to the cabinet an originally signed duplicate of the Trust Agreement to Demonstrate Liability Coverage, executed on DEP Form 6035P, incorporated by reference in Section 4 of 401 KAR 34:080. [to the cabinet.]

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The trust fund or liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the trust fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this administrative regulation to cover the difference. [For purposes of this administrative regulation, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator by this administrative regulation, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.]

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners and operators of all hazardous waste sites or facilities that qualify for interim status.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments.
2. Second and subsequent years: No public comments.
3. Effects on the promulgating administrative body:
 - a. Direct and indirect costs or savings:
 1. First Year: There will be no costs or savings.
 2. Continuing costs or savings: Not applicable.
 3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.
- b. Reporting and paperwork requirements: There are no extra paperwork requirements.
4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.
5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.
6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:
 - a. Geographical area in which administrative regulation will be implemented: No public comments were received.
 - b. Kentucky: No public comments were received.
7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.
8. Assessment of expected benefits of the administrative regulation: These amendments are consistent with federal standards and clarify the procedure for demonstrating liability coverage.
- 9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: There are no effects on public health or the environment.
- b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.
- c. If detrimental effect would result, explain detrimental effect: Not applicable.
10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.
 - a. Necessity of proposed regulation if in conflict: Not applicable.
 - b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
11. Any additional information or comments: No additional comments.
12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies to owners and operators of hazardous waste facilities that qualify for interim status, consistent with federal standards, to protect human health and the environment. Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes including liability requirements for hazardous waste facilities who have interim status. These changes are necessary to maintain consistency between state and federal programs. Additions and exclusions have been made to clarify the applicability of the standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste sites or facilities that qualify for interim status.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 35:245. Containment buildings (IS).

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR Part 265 Subpart DD

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

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-520 and 224.46-530 and to establish minimum standards for containment buildings. **This administrative regulation is equivalent to federal standards established in 40 CFR 265 Subpart DD except the date of compliance has been changed to reflect the original effective date of this administrative regulation.**

Section 1. Applicability. The requirements of this administrative regulation apply to owners or operators who store or treat hazardous waste in units designed and operated under Section 2 of this administrative regulation. These provisions shall become effective on the effective date of this administrative regulation, although the owner

or operator may notify the cabinet of their intent to be bound by this administrative regulation at an earlier time. The owner or operator is not subject to the definition of land disposal in KRS 224.01-010 provided that the unit:

(1) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the units, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(2) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel and handling equipment within the unit;

(3) If the unit is used to manage liquids, has:

(a) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(b) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(c) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements under Section 2(2)(d) of this administrative regulation;

(4) Has controls as needed to prevent fugitive dust emissions to meet the no visible emission standard in Section 2(3)(a)4. of this administrative regulation; and

(5) Is designed and operated to ensure containment and prevent the migration of materials from the unit by personnel or equipment.

Section 2. Design and Operating Standards. (1) All containment buildings shall comply with the following design standards:

(a) The containment building shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (for example, precipitation, wind, run-on), and to assure containment of managed wastes.

(b) The floor and containment walls of the unit, including the secondary containment system if required under subsection (2) of this section, shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes shall be chemically compatible with those wastes. The cabinet will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this subsection. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

1. They provide an effective barrier against fugitive dust emissions under subsection (3)(a)4 of this section; and

2. The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(c) Incompatible hazardous wastes or treatment reagents shall not

be placed in the unit or its secondary containment system if they may cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(d) A containment building shall have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(2) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator shall include:

(a) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example a geomembrane covered by a concrete wear surface).

(b) A liquid collection and removal system to prevent the accumulation of liquid on the primary barrier of the containment building:

1. The primary barrier shall be sloped to drain liquids to the associated collection system; and

2. Liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time that protects human health and the environment.

(c) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

1. The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

a. Constructed with a bottom slope of one (1) percent or more; and

b. Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of twelve (12) inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m²/sec or more.

2. If treatment is to be conducted in the building, an area in which such treatment will be conducted shall be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

3. The secondary containment system shall be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Section 4(4)(a) of 401 KAR 35:190. In addition, the containment building shall meet the requirements of Section 4(3)(a) and (b) of 401 KAR 35:190 to be considered an acceptable secondary containment system for a tank.)

(d) For existing units other than ninety (90) day generator units, the cabinet may delay the secondary containment requirement for up to two (2) years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this administrative regulation. In making this demonstration, the owner or operator shall:

1. Provide written notice to the cabinet of their request within ninety (90) days of the effective date of this administrative regulation. This notification shall describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

2. Respond to any comments from the cabinet on these plans within thirty (30) days; and

3. Fulfill the terms of the revised plans, if such plans are

approved by the cabinet.

(3) Owners or operators of all containment buildings shall:

(a) Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

1. Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that may cause hazardous waste to be released from the primary barrier;

2. Maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

3. Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area shall be designated to decontaminate equipment and any rinsate shall be collected and properly managed; and

4. Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR Part 60, Appendix A, Method 22-Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares, incorporated by reference in 401 KAR 50:015 Section 1(1)(c)(1)qq). In addition, all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) shall be operated and maintained with sound air pollution control practices. This state of no visible emissions shall be maintained effectively at all times during normal operating conditions, including when vehicles and personnel are entering and exiting the unit.

(b) Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of subsections (1) through (3) of this section. For units placed into operation prior to the effective date of this administrative regulation [~~February 18, 1993~~], this certification shall be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than sixty (60) days after the date of initial operation of the unit. After the effective date of this administrative regulation [~~February 18, 1993~~], Professional Engineer certification will be required prior to operation of the unit.

(c) Throughout the active life of the containment building, if the owner or operator detects a condition that may lead to or has caused a release of hazardous waste, the owner or operator shall repair the condition promptly, in accordance with the following procedures.

1. Upon detection of a condition that has led to a release of hazardous waste (for example, upon detection of leakage from the primary barrier) the owner or operator shall:

a. Enter a record of the discovery in the facility operating record;

b. Immediately remove the portion of the containment building affected by the condition from service;

c. Determine what steps shall be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

d. Within seven (7) days after the discovery of the condition, notify the cabinet of the condition, and within fourteen (14) working days, provide a written notice to the cabinet with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

2. The cabinet will review the information submitted, make a determination regarding whether the containment building 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.

3. Upon completing all repairs and cleanup the owner or operator shall notify the cabinet in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (3)(c)1d of this section.

(d) Inspect and record in the facility's operating record, at least once every seven (7) days, data gathered from monitoring equipment

and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(4) For a containment building that contains both areas with and without secondary containment, the owner or operator shall:

(a) Design and operate each area in accordance with the requirements enumerated in subsections (1) through (3) of this section;

(b) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(c) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(5) The cabinet may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

Section 3. Closure and Postclosure Care. (1) At closure of a containment building, the owner or operator shall 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. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings shall meet all of the requirements specified in 401 KAR 35:070 and 35:080.

(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 containment facility and perform postclosure care in accordance with the closure and postclosure requirements of Section 4 of 401 KAR 35:230 that apply to landfills. In addition, for the purposes of closure, postclosure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in 401 KAR 35:070 and 35:080.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners and operators of hazardous waste interim status facilities that store or treat hazardous waste in containment buildings.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any

effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There are no costs or savings.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of the regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with current federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will improve public health and the environment across the Commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Detrimental effects could occur without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Hazardous waste facilities that mismanage hazardous waste in containment buildings could cause harm to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was applied. This administrative regulation applies to owners and operators of hazardous waste interim status facilities that use containment buildings, consistent with federal standards, to protect human health and the environment. Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air

pollution.

2. State compliance standards: The proposed regulation adopts amendments that apply to storing or treating hazardous waste interim status facility. This regulation is necessary to maintain consistency between state and federal programs. This has been added to clarify the applicability of these amendments. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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. If yes, complete questions 2-4.

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that stores and treats hazardous waste in interim status containment buildings.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 36:005. Definitions related to 401 KAR Chapter 36.

RELATES TO: KRS 224.01, 224.10, 40 CFR 260.10

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: This chapter implements provisions of KRS 224.46-520 and 224.46-530. This administrative regulation defines essential terms that are used in this chapter. The majority of terms defined in this administrative regulation are equivalent to federal terms contained in 40 CFR Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky

statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 36 shall have the meanings given in this section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfill and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "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.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion

chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "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.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "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.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; or [and]

(b) A generator who generates acutely hazardous waste listed in

Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" 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, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "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.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the

facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure ~~and postclosure~~ cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) ~~["Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner or operator's chief financial officer (see 40 CFR 144.70(f)).~~

~~(59)~~ "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

~~(59)~~ ~~[(60)]~~ "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

~~(60)~~ ~~[(61)]~~ "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

~~(61)~~ ~~[(62)]~~ "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266; and

~~(d)~~ That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

~~(62)~~ ~~[(63)]~~ "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3)

of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63) [(64)] "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(64) [(65)] "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65) [(66)] "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 (for example, transport vehicle) and a boiler or industrial furnace.

(66) "Disposal" shall have the meaning specified in KRS 224.01-010.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) ["Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "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.

(69) [(70)] "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.

(70) [(71)] "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(71) [(72)] "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.

(72) [(73)] "Draft permit" shall have the same meaning as "proposed permit".

(73) [(74)] "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(74) [(75)] "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(75) [(76)] "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(76) [(77)] "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(77) [(78)] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(78) [(79)] "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(79) [(80)] "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) [(81)] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) [(82)] "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(82) [(83)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(83) [(84)] "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 **401 KAR 34:275**. ~~(this administrative regulation.)~~

(84) [(85)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85) [(86)] "Existing" 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.

(86) [(87)] "Existing component" shall have the same meaning as "existing tank system."

(87) [(88)] "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) [(89)] "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:
1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(89) [(90)] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(90) [(91)] "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation 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 site or installation of the tank system

to be completed within a reasonable time.

(91) [(92)] "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(92) [(93)] "Face amount" means the total amount the insurer is obligated to pay under the policy.

(93) [(94)] "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example [e.g.], one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(94) "Facility mailing list" means the mailing list for a facility maintained in accordance with Section 7(3)(a)4c of 401 KAR 38:050.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "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.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "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.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

~~(113) ["Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.~~

~~(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.~~

(114) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

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

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01-010.

(117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

(118) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(119) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

~~[(118) "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.~~

~~[(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit for use tank system.]~~

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container

alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(122) "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.

(123) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(124) [(422)] "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

[(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.]

(125) [(424)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) [(425)] "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(127) [(426)] "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) [(427)] "In existence" shall have the same meaning as "existing."

(129) [(428)] "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) [(429)] "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) [(430)] "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.

(132) [(431)] "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) [(432)] "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) [(433)] "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(135) [(434)] "In vapor service" shall have the same meaning as "in gas service".

(136) [(435)] "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) [(436)] "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(138) [(437)] "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) [(438)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) [(439)] "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) [(440)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(142) [(441)] "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulp liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(143) [(442)] "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(144) [(443)] "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(145) [(444)] "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction

materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(146) ~~[(145)]~~ "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(147) ~~[(146)]~~ "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(148) ~~[(147)]~~ "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(149) ~~[(148)]~~ "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(150) ~~[(149)]~~ "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

~~[(150)] "UC well" means a underground injection control well as provided in 40 CFR Part 144.]~~

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(158) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

~~[(159)] "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.]~~

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal

waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "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.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "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.

(169) "Manifest" shall have the meaning specified in KRS 224.01-010.

(170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

~~[(170)] "Manifest" shall have the meaning specified in KRS 224.01-010.]~~

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to

gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

~~[(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.]~~

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(180) "New tank component" shall have the same meaning as "new tank system."

(181) ~~[(180)]~~ "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

~~[(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.]~~

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature

for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "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.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

~~[(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit. However, the term permit does not include draft permit or proposed permit.]~~

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who

work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for ~~hazardous~~ ~~solid~~ waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in 401 KAR Chapter 31 ~~[40 CFR Part 264]~~.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

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

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "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.

(220) "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.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or

whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes 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 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "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.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

~~[(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.]~~

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "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.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "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.

(264) "Storage" shall have the meaning specified in KRS 224.01-010.

(265) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

~~(266) [(265)] "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.~~

~~[(266) "Storage" shall have the meaning specified in KRS 224.01-010.]~~

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "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.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic)

which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

~~[(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").]~~

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs 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.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;

4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment" shall have the meaning specified in KRS 224.01-010.

(288) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

~~[(289) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.]~~

~~[(289) "Treatment" shall have the meaning specified in KRS 224.01-010;]~~

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 CFR Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well").

~~[(293) "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.]~~

~~[(294) "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.]~~

~~[(295) "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.]~~

~~[(296) "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:~~

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

(d) Spent lamps as described in Section 5 of 401 KAR 43:010.

~~[(297) "Universal waste handler":~~

(a) Means:

1. A generator of universal waste; or
2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections

4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030, disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) [(297)] "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) [(298)] "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) [(299)] "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) [(300)] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302) [(301)] "Used oil" shall have the same meaning as KRS 224.50-545.

(303) [(302)] "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) [(303)] "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.

(305) [(304)] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) [(305)] "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) [(306)] "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.

(308) [(307)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) [(308)] "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) [(309)] "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" shall have the meaning specified in KRS 224.01-010.

(312) [(310)] "Waste boundary" means the outermost perimeter

of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) [(311)] "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314) [(312)] "Waste pile" shall have the same meaning as "pile".

(315) [(313)] "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010 [Third Edition, September 1986, as amended by Update I, November 16, 1992 (incorporated by reference refer to § 260.11 of this chapter)]. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

~~[(314)] "Waste" shall have the meaning specified in KRS 224.01-010.]~~

(316) [(315)] "Wastewaters" means 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:

(a) 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 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

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

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

(317) [(316)] "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) [(317)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

~~[(318)] "Water" or "Waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.]~~

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(320) [(349)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(321) [(320)] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(322) [(324)] "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) [(322)] "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) [(323)] "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| | |
|-----------------|---|
| Am. | Amended |
| C | Corrosive waste |
| CAA | Clean Air Act, as amended |
| CFR | Code of Federal Regulations |
| cm | Centimeter |
| cm ² | Centimeter squared |
| CO | Carbon monoxide |
| CO ₂ | Carbon dioxide |
| CWA | Clean Water Act, as amended |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| DOT | United States Department of Transportation |
| DRE | Destruction and removal efficiency |
| E | Explosive waste |
| eff. | Effective |
| EPA | United States Environmental Protection Agency |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FIA | Federal Insurance Administration |
| FR | Federal Register |
| H | Acutely hazardous waste |
| ha | Hectare |
| HTMR | High temperature metals recovery |
| HSWA | Hazardous and Solid Waste Amendments of 1994 |
| I | Ignitable waste |
| KAR | Kentucky Administrative Regulation |
| kg | Kilogram |
| KPDES | Kentucky Pollution Discharge Elimination System |
| KRS | Kentucky Revised Statute |
| Ky.R. | Administrative Register of Kentucky |
| L | Liter |
| LC | Lethal concentration |
| LD | Lethal dose |
| ml | Milliliter |
| mm | Millimeter |
| N | Normal |
| NESHAPS | National Emissions Standards for Hazardous Air Pollutants |
| NPDES | National Pollutant and Discharge Elimination |

| | |
|-------------|---|
| PCB | System |
| pCi/l | Polychlorinated biphenyl |
| PHC | Picocuries per liter |
| Permit POHC | Principal hazardous constituent |
| PM | Permitted principal organic hazardous constituent |
| POHC | Particulate matter |
| ppm | Principal organic hazardous constituent |
| Trial POHC | parts per million |
| POTW | Trial burn principal organic hazardous constituent |
| PSD | Publicly owned treatment works |
| psi | Prevention of significant deterioration |
| psig | Pounds per square inch |
| R | Pounds per square inch gauge |
| RCRA | Reactive waste |
| | Resource Conservation and Recovery Act, as amended |
| SDWA | Safe Drinking Water Act, as amended |
| SEC | Securities and Exchange Commission |
| SIC | Standard Industrial Classification Code |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |
| T | Toxic waste |
| UIC | Underground Injection Control |
| UICP | Underground Injection Control Program |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| USGS | United States Geological Survey |
| USPS | United States Postal Service |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 36. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 36, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

401 KAR 37:005. Definitions related to 401 KAR Chapter 37.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10, 268.2

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

NECESSITY, FUNCTION, AND CONFORMITY: This chapter implements provisions of KRS 224.46-505 and 224.46-520 relative to land disposal restrictions. This administrative regulation defines essential terms that are used in this chapter. The majority of terms defined in this administrative regulation are equivalent to federal terms contained in 40 CFR Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 37 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank

bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfill and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "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.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part

B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or

forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "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.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "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.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; or ~~and~~

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" 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, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "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.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure ~~and postclosure~~ cost estimates" means the most recent of the estimates prepared in accordance with Section

1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) ~~["Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).~~

(59) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

(59) [(60)] "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

(60) [(61)] "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(61) [(62)] "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266; and

(d) That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(62) [(63)] "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63) [(64)] "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(64) [(65)] "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65) [(66)] "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 (for example, transport vehicle) and a boiler or industrial furnace.

(66) "Disposal" shall have the meaning specified in KRS 224.01-010.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) ~~["Disposal" shall have the meaning specified in KRS 224.01-010.~~

(69) [(70)] "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.

(69) [(70)] "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.

(70) [(71)] "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(71) [(72)] "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.

(72) [(73)] "Draft permit" shall have the same meaning as "proposed permit".

(73) [(74)] "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(74) [(75)] "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(75) [(76)] "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(76) [(77)] "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(77) [(78)] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(78) [(79)] "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(79) [(80)] "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) [(81)] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) [(82)] "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(82) [(83)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in

response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(83) [(84)] "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 401 KAR 34:275. ~~[this administrative regulation.]~~

(84) [(85)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85) [(86)] "Existing" 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.

(86) [(87)] "Existing component" shall have the same meaning as "existing tank system."

(87) [(88)] "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) [(89)] "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun;

or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(89) [(90)] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(90) [(91)] "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation 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 site or installation of the tank system to be completed within a reasonable time.

(91) [(92)] "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(92) [(93)] "Face amount" means the total amount the insurer is obligated to pay under the policy.

(93) [(94)] "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example e.g., one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(94) "Facility mailing list" means the mailing list for a facility

maintained in accordance with Section 7(3)(a)4c of 401 KAR 38:050.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "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.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "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.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) ~~"Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.~~

(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(114) "Groundwater table" means the upper boundary of the

saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

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

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

(118) "Hazardous waste" shall have the meaning specified in KRS 224.01.010.

(119) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

~~[(118)] "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.~~

~~[(119)] "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.]~~

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(122) "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.

(123) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling,

incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(124) [(122)] "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

~~[(123)] "Hazardous waste" shall have the meaning specified in KRS 224.01.010.]~~

(125) [(124)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) [(125)] "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(127) [(126)] "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) [(127)] "In existence" shall have the same meaning as "existing."

(129) [(128)] "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) [(129)] "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) [(130)] "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.

(132) [(131)] "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) [(132)] "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) [(133)] "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(135) [(134)] "In vapor service" shall have the same meaning as "in gas service."

(136) [(135)] "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) [(136)] "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(138) [(137)] "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) [(138)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under

uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) [(139)] "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) [(140)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(142) [(141)] "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (a) Cement kilns;
- (b) Lime kilns;
- (c) Aggregate kilns;
- (d) Phosphate kilns;
- (e) Coke ovens;
- (f) Blast furnaces;
- (g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);
- (h) Titanium dioxide chloride process oxidation reactors;
- (i) Methane reforming furnaces;
- (j) Pulp and liquor recovery furnaces;
- (k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
- (l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or
- (m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(143) [(142)] "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(144) [(143)] "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(145) [(144)] "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(146) [(145)] "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(147) [(146)] "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(148) [(147)] "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(149) [(148)] "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(150) [(149)] "Internal floating roof" means a floating roof that

rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

[(150)] "IUC well" means a ~~underground injection control well as provided in 40 CFR Part 144.~~

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(158) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

[(159)] "Landfill" means a ~~disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.~~

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "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.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "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.

(169) "Manifest" shall have the meaning specified in KRS 224.01-010.

(170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

~~[(170) "Manifest" shall have the meaning specified in KRS 224.01-010.]~~

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

~~[(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air,~~

~~soil, groundwater, or surface water.]~~

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(180) "New tank component" shall have the same meaning as "new tank system."

~~[(181) [(180)] "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.~~

~~[(181) "New" means any hazardous waste site or facility that commenced construction after November 10, 1980.]~~

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "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.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

~~[(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit by rule, registered permit by rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.]~~

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using

a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for hazardous [solid] waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in 401 KAR Chapter 31 [40 CFR Part 264].

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

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

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "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.

(220) "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.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the

drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes 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 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforce-

able sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "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.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

~~[(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.]~~

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "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.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "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.

(264) **"Storage" shall have the meaning specified in KRS 224.01-010.**

(265) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(266) ~~[(265)]~~ "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

~~[(266)] "Storage" shall have the meaning specified in KRS 224.01-010.~~

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "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.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) **"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt,**

pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

~~[(279) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").]~~

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs 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.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) **"Treatment" shall have the meaning specified in KRS 224.01-010.**

(288) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable

for storage, or reduced in volume.

(289) [(289)] "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

~~[(289) "Treatment" shall have the meaning specified in KRS 224.01-040.]~~

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 CFR Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(293) [(292)] "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(294) [(293)] "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) [(294)] "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) [(295)] "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

(a) Batteries as described in Section 2 of 401 KAR 43:010;

(b) Pesticides as described in Section 3 of 401 KAR 43:010;

(c) Thermostats as described in Section 4 of 401 KAR 43:010; and

(d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) [(296)] "Universal waste handler":

(a) Means:

1. A generator of universal waste; or

2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) [(297)] "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) [(298)] "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) [(299)] "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) [(300)] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within

the facility's property boundary.

(302) [(301)] "Used oil" shall have the same meaning as KRS 224.50-545.

(303) [(302)] "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) [(303)] "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.

(305) [(304)] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) [(305)] "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) [(306)] "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.

(308) [(307)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) [(308)] "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) [(309)] "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" shall have the meaning specified in KRS 224.01-010.

(312) [(310)] "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) [(311)] "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314) [(312)] "Waste pile" shall have the same meaning as "pile".

(315) [(313)] "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010) [Third Edition, September 1986, as amended by Update 1, November 15, 1992 (incorporated by reference refer to § 260.11 of this chapter)]. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) [(314)] "Waste" shall have the meaning specified in KRS 224.01-010.]

(316) [(315)] "Wastewaters" means 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:

(a) 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 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

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

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

(317) [(316)] "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) [(317)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(318) [(318)] "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.]

(320) [(319)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(321) [(320)] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(322) [(321)] "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) [(322)] "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) [(323)] "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids; large and small, are

filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| | |
|-----------------|---|
| Am. | Amended |
| C | Corrosive waste |
| CAA | Clean Air Act, as amended |
| CFR | Code of Federal Regulations |
| cm | Centimeter |
| cm ² | Centimeter squared |
| CO | Carbon monoxide |
| CO ₂ | Carbon dioxide |
| CWA | Clean Water Act, as amended |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| DOT | United States Department of Transportation |
| DRE | Destruction and removal efficiency |
| E | Explosive waste |
| eff. | Effective |
| EPA | United States Environmental Protection Agency |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FIA | Federal Insurance Administration |
| FR | Federal Register |
| H | Acutely hazardous waste |
| ha | Hectare |
| HTMR | High temperature metals recovery |
| HSWA | Hazardous and Solid Waste Amendments of 1994 |
| I | Ignitable waste |
| KAR | Kentucky Administrative Regulation |
| kg | Kilogram |
| KPDES | Kentucky Pollution Discharge Elimination System |
| KRS | Kentucky Revised Statute |
| Ky.R. | Administrative Register of Kentucky |
| L | Liter |
| LC | Lethal concentration |
| LD | Lethal dose |
| ml | Milliliter |
| mm | Millimeter |
| N | Normal |
| NESHAPS | National Emissions Standards for Hazardous Air Pollutants |
| NPDES | National Pollutant and Discharge Elimination System |
| PCB | Polychlorinated biphenyl |
| pCi/l | Picocuries per liter |
| PHC | Principal hazardous constituent |
| Permit POHC | Permitted principal organic hazardous constituent |
| PM | Particulate matter |
| POHC | Principal organic hazardous constituent |
| ppm | parts per million |
| Trial POHC | Trial burn principal organic hazardous constituent |
| POTW | Publicly owned treatment works |
| PSD | Prevention of significant deterioration |
| psi | Pounds per square inch |
| psig | Pounds per square inch gauge |
| R | Reactive waste |
| RCRA | Resource Conservation and Recovery Act, as amended |
| SDWA | Safe Drinking Water Act, as amended |
| SEC | Securities and Exchange Commission |

ADMINISTRATIVE REGISTER - 2102

| | |
|----------|---|
| SIC | Standard Industrial Classification Code |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |
| T | Toxic waste |
| UIC | Underground Injection Control |
| UICP | Underground Injection Control Program |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| USGS | United States Geological Survey |
| USPS | United States Postal Service |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the

beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of hazardous waste generated or managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

AGENCY CONTACT: James Hale

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 37. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 37, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

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 Subparts A, B, Appendices IV to IX
STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-505, 224.46-520, relative to land disposal restrictions. 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. This administrative regulation is equivalent to federal standards established in 40 CFR 268 Subparts A and B and 40 CFR 268 Appendices IV, VI, VII, VIII, and X except for: Section 2(6)(d) of this administrative regulation, which includes spent lamps as a universal waste; Section 7(1) of this administrative regulation, which does not include federal language on tolling agreements that violates the statutory manifesting requirements of KRS 224 Subchapter 46; and Section 7(4)(a) of this administrative regulation, which adds language to specify what the notification shall include.

Section 1. Definitions Applicable to 401 KAR Chapter 37. The definitions previously found in this section have been relocated to the definition administrative regulation for this chapter, which is 401 KAR 37:005. [(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 1980.

(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 slag (either dress or scoria);~~

2. ~~Classified 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 of (or) hazardous waste at the point of injection; and

3. If at the point of generation the injected wastes include D001 High TOC subcategory wastes or D012 through D017 pesticide wastes that are prohibited under 40 CFR 148.17(c), those wastes have been treated to meet the treatment standards of Section 1 of 401 KAR 37:040 before injection.

(4) The requirements of this chapter shall not affect the availability of a waiver under Section 121(d)(4) of CERCLA.

(5) The following hazardous wastes are not subject to any

provision of 401 KAR Chapter 37:

(a) Waste generated by a conditionally exempt 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.

(d) De minimis losses to wastewater treatment systems of commercial chemical product or chemical intermediates that are ignitable (D001), or corrosive (D002), or are organic constituents that exhibit the characteristic of toxicity (D012-D043), and that contain underlying hazardous constituents, are not considered to be prohibited wastes. De minimis is losses from normal material handling operations (for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(e) Land disposal prohibitions for hazardous characteristic wastes do not apply to laboratory wastes displaying characteristic of ignitability (D001) or corrosivity (D002), or organic toxicity (D012-D043), that are mixed with other plant wastewaters at facilities whose ultimate discharge is subject to regulation under the CWA (including wastewaters at facilities which have eliminated the discharge of wastewater), provided that the annualized flow of laboratory wastewater into the facility's headwork does not exceed one (1) percent, or provided that the laboratory wastes' combined annualized average concentration does not exceed one (1) part per million in the facility's headwork.

(6) Universal waste handlers and universal waste transporters are exempt from Section 7 of this administrative regulation and 401 KAR 37:050 for the hazardous wastes listed below. These handlers are subject to regulation under 401 KAR Chapter 43:

(a) Batteries as described in Section 2 of 401 KAR 43:010;

(b) Pesticides as described in Section 3 of 401 KAR 43:010;

(c) Thermostats as described in Section 4 of 401 KAR 43:010;
and

(d) Spent [mercury-containing] lamps as described in Section 5 of 401 KAR 43:010.

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 KRS 224.46-520 [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.

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, 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 or Section 4 of 401 KAR 35:020 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. 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 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 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 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 will be no migration of any hazardous constituent into ground-water 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 (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 will result in the capacity not being available by the applicable effective date;

(d) The capacity being constructed or otherwise provided by the applicant will 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 will 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 be managed; and

(g) Any waste managed in a surface impoundment or landfill during the extension period will 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; [¶]

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; [¶]

5. The surface impoundment, if newly subject to hazardous waste regulation due to the promulgation of additional listings or characteristics for the identification of hazardous waste, is in compliance with the requirements of 401 KAR 35:060 within twelve (12) months of the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of Section 10(1), (3), and (4) of 401 KAR 35:200 within forty-eight (48) months after the promulgation of additional listings or characteristics of hazardous waste. If a national capacity variance is granted, during the period the variance is in effect the surface impoundment, if newly subject to hazardous waste regulation due to the promulgation of additional listings or characteristics of hazardous waste, is in compliance with the requirement of 401 KAR 35:060 within twelve (12) months of the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of Section 10(1), (3), and (4) of 401 KAR 35:200 within forty-eight (48) months after the promulgation of additional listings or

characteristics of hazardous waste; or

6. 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.

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 will 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 will 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 will 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.

Section 7. Waste Analysis. (1) Except as specified in Section 3 of 401 KAR 37:030, if a generator's waste is listed in 401 KAR 31:040, [or Section 5 of 401 KAR 37:040,] the generator shall test his waste or test an extract [developed] using the Toxicity Characteristic Leaching Procedure, Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, incorporated in 40 CFR 260.11, adopted in Section 3 of 401 KAR 30:010, [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 401 KAR 31:030, the generator shall [must] test an extract using the Toxicity Characteristic Leaching Procedure, Method 1311 [test method described in Section 10(2)(f) of this administrative regulation], or use knowledge of the waste, to determine if the waste is restricted from land disposal under this chapter. If the generator determines that this waste exhibits the characteristic of ignitability (D001) (and is not in the high TOC Ignitable Liquids Subcategory or is not treated by CMBST or RORGS of Table 1 of Section 3 of 401 KAR 37:040), or the characteristic of corrosivity (D002), and is prohibited under Section 8 of 401 KAR 37:030, or the characteristic of organic toxicity (D012-D043) and is prohibited under Section 9 of 401 KAR 37:030, the generator shall determine the underlying hazardous constituents in the D001, D002, or D012-D043 waste.

(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 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 or KRS 224.46-520]. The notice shall include the following information:

1. EPA hazardous waste number;
2. The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043 and in Section 3 of 401 KAR 37:030 or KRS 224.46-520. Generators shall also include whether the waste is a nonwastewater or wastewater and indicate the subcategory

of the waste (such as "D003 reactive cyanide"), if applicable; [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;]

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

4. For hazardous debris, the contaminants subject to treatment as provided by Section 5(b) of 401 KAR 37:040 and the following statement: "This hazardous debris is subject to the alternative treatment standards of Section 5 of 401 KAR 37:040";

5. The waste analysis data, where available; and

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

(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 or KRS 224.46-520. Generators of hazardous debris that is excluded from the definition of hazardous waste under Section 3(6)(b) of 401 KAR 31:030 (that is, debris that the cabinet has determined does not contain hazardous waste) however, are not subject to these notification and certification requirements.

1. The notice shall include the following information:

a. EPA hazardous waste number;

b. The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043 and Section 3 of 401 KAR 37:030 or KRS 224.46-520. Generators shall also include whether the waste is a nonwastewater or wastewater and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable; [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;]

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 Section 4 of 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:

1. EPA hazardous waste number;
2. The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043. Generators shall also include whether the waste is a nonwastewater or wastewater and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable; [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;]
3. The manifest number associated with the shipment of waste;
4. Waste analysis data, where available; ~~and~~
5. For hazardous debris when using the alternative treatment technologies provided by Section 5 of 401 KAR 37:040:
 - a. The contaminants subject to treatment, as described in Section 6(2) of 401 KAR 37:040; and
 - b. An indication that these contaminants are being treated to comply with Section 5 of 401 KAR 37:040.
6. For hazardous debris when using the treatment standards for the contaminating wastes in Section 1 of 401 KAR 37:040: the requirements described in paragraph (c)1, 2, 3, 4, and 7 of this subsection.
7. The date the waste is subject to the prohibitions.

(d) If a generator is managing a prohibited waste in tanks, ~~or~~ containers, or containment buildings regulated under Section 5 of 401 KAR 32:030, and is treating such waste in the tanks, ~~or~~ containers, or containment buildings 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. (Generators treating hazardous debris under the alternative treatment standards of Table 1 of Section 6 of 401 KAR 37:040, however, are not subject to these waste analysis requirements.) 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 chapter ~~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.

(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 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) 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 none of the wastes specified in Appendix IV of 40 CFR Part 268, adopted [identified] in Section 10(2)(a) of this administrative regulation, and wishes to use the alternative treatment standard under Section 3(2) [4] of 401 KAR 37:040 [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, except that underlying hazardous constituents need not be determined. 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 does not contain ~~only the~~ any wastes adopted [specified] in Section 10(2)(a) of this administrative regulation ~~[or solid wastes not subject to administrative regulation under 401 KAR Chapter 34].~~ I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

~~[(i) Small quantity generators with tolling agreements pursuant to Section 1(6) 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.]~~ [(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.]

(i) 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 or Section 4 of 401 KAR 35:020. 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 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 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) 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 except that debris excluded from the definition of hazardous waste under Section 3(5) of 401 KAR 31:010 (that is, debris treated by an extraction or destruction technology provided by Table 1 of Section 6 of 401 KAR 37:040, or debris that the cabinet has determined does not contain hazardous waste) is subject to the notification and certification requirements of subsection (4) of this section rather than these notification requirements:

1. EPA hazardous waste number;

2. The waste constituents to be monitored, if the monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043 and in Section 3 of 401 KAR 37:030 or KRS 224.46-520. Generators shall also include whether the waste is a nonwastewater or wastewater, and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable. [The corresponding treatment standards for wastes F001 to F005, F039, and all applicable prohibitions set forth in Section 3 of 401 KAR 37:030 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 or KRS 224.46-520. Debris excluded from the definition of hazardous waste under Section 3(5) of 401 KAR 31:010 (that is, debris treated by an extraction or destruction technology provided by Table 1 of Section 6 of 401 KAR 37:040, or debris that the cabinet has determined does not contain hazardous waste) is subject to the notification and certification requirements of subsection (4) of this administrative regulation rather than the certification requirements of this paragraph.

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

4. For characteristic wastes D001, D002, and D012-D043 that are: subject to the treatment standards in Section 1 of 401 KAR 37:040 (other than those expressed as a required method of treatment); that are reasonably expected to contain underlying hazardous constituents; are treated on site to remove the hazardous characteristic; and are then sent off site for treatment of underlying hazardous constituents, the certification shall state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of Section 1 of 401 KAR 37:040 to

remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet universal treatment standards. 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 will 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) 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, 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 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 or using any methods required by generators under Section 3 of 401 KAR 37:030, 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 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 or Section 4 of 401 KAR 37:020.

(4) Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under Section 3(6) of 401 KAR 31:010 (that is, debris treated by an extraction or destruction technology provided by Table 1 of Section 7 of 401 KAR 37:040, and debris that the cabinet has determined does not contain hazardous waste) are subject to the following notification and certification requirements:

(a) A one (1) time notification shall be submitted to the cabinet including the following information:

1. The name and address of the solid waste site or facility receiving the treated debris;

2. A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and

3. For debris excluded under Section 3(5) of 401 KAR 31:010, the technology from Table 1 of Section 7 of 37:040 used to treat the debris.

(b) The notification shall be updated if the debris is shipped to a different facility, and, for debris excluded under Section 3(5) of 401 KAR 31:010, if a different type of debris is treated or if a different technology is used to treat the debris.

(c) For debris excluded under Section 3(5) of 401 KAR 31:010, the owner or operator of the treatment facility shall document and certify compliance with the treatment standards of Table 1 of Section 7 of 37:040 as follows:

1. Records shall be kept of all inspections, evaluations, and analyses of treated debris that are made to determine compliance with the treatment standards;

2. Records shall be kept of any data or information the treater

obtains during treatment of the debris that identifies key operating parameters of the treatment unit; and

3. For each shipment of treated debris, a certification of compliance with the treatment standards shall be signed by an authorized representative and placed in the facility's files. The certification shall state the following: "I certify under penalty of law that the debris has been treated in accordance with the requirements of Section 6 of 37:040. I am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment."

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 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) If a generator determines that there is no practically available treatment for his waste, he shall fulfill the following requirements:

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.

(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 (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 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 will 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 [eede] listed in 401 KAR 31:040 operates in lieu of the treatment standard for the waste identified [eede] under 401 KAR 31:010 as specified in subsection (2) of this section. If the generator determines that his waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by CMBST, or RORGS), or the characteristic of corrosivity (D002), and is prohibited under Section 8 of 401 KAR 37:040; or that his waste displays the characteristic of toxicity (D012-D043), and is prohibited under Section 9 of 401 KAR 37:030, the generator shall determine the underlying hazardous constituents, in the D001, D002, or D012-D043 wastes.

(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 identified [eede] 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, a one (1) time notification and certification shall be placed in the generator's or treater's file and a copy sent to the cabinet. The notification and certification that is placed in the generator's or treaters file shall be updated if the process or operation generating the waste changes or if the solid waste site or facility receiving the waste changes. However, the

generator or treater need only notify the cabinet on an annual basis if such changes occur. Such notification and certification shall be sent to the cabinet by the end of the calendar year in which the change occurs. ~~[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)~~, treatability group, and underlying hazardous constituents in D001 and D002 wastes prohibited under Section 8 of 401 KAR 37:030, or D012-D043 wastes under Section 9 of 401 KAR 37:030, ~~[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. If treatment removes the characteristic but does not treat underlying hazardous constituents, then the certification found in Section 7(2)(e)4 applies.

Section 10. Identification of Wastes to be Evaluated by EPA. (1) 40 CFR 268.10 to 268.12 July 1, 1995 ~~[1994]~~, which identify wastes that are to be evaluated to determine land disposal prohibitions and treatment standards ~~[and] are hereby adopted [incorporated]~~ into this administrative regulation without change. [by reference.]

(2) The following appendices to 40 CFR Part 268 (July 1, 1995 ~~[1996]~~ ~~[1992]~~) are adopted [incorporated] into this administrative regulation without change: [by reference:]

(a) Appendix IV;

(b) ~~[Appendix V;~~

~~(c)]~~ Appendix VI;

(c) ~~(d)]~~ Appendix VII;

(d) ~~(e)]~~ Appendix VIII; and

(e) Appendix X.

~~[(f) Appendix IX.]~~

(3) The appendices specified in subsections (1) and (2) of this section are available for inspection and copying, subject to copyright law, at [from] the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716 between 8 a.m. and 4:30 p.m., local time, Monday through Friday.

Section 11. Surface Impoundment Exemptions. (1) This section defines additional circumstances under which an otherwise prohibited waste may continue to be placed in a surface impoundment.

(2) Wastes that are newly identified or listed under KRS 224.46-510(3) and 401 KAR 31:030 and 31:040 after November 8, 1984, and stored in a surface impoundment that is newly subject to 401 KAR Chapters 31 through 39 as a result of the additional identification or listing, may continue to be stored in the surface impoundment for forty-eight (48) months after the promulgation of the additional listing or characteristic provided that the surface impoundment is in compliance with the requirements of 401 KAR 35:090 within twelve (12) months after promulgation of the new listing or characteristic.

(3) Wastes that are newly identified or listed under KRS 224.46-510(3) and 401 KAR 31:030 and 31:040 after November 8, 1984, and treated in a surface impoundment that is newly subject to 401 KAR Chapters 31 through 39 as a result of the additional identification or listing, may continue to be treated in that surface impoundment

provided that surface impoundment is in compliance with the requirements of 401 KAR 35:060 within twelve (12) months after the promulgation of the new listing or characteristic. In addition, if the surface impoundment continues to treat hazardous waste after forty-eight (48) months from promulgation of the additional listing or characteristic, it shall then be in compliance with Section 4 of this administrative regulation.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff will have an increased workload in order to process the newly regulated entities. The increase in workload will also increase costs.

2. Continuing costs or savings: Once the new entities are processed, there should not be any extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with current federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The public health and environmental welfare will improve across the commonwealth with the implementation of this regulation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Improper disposal of hazardous waste could pose a threat to human health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes to the land disposal restrictions. The changes are necessary to maintain consistency between state and federal programs. A variety of additions and exclusions have been made to clarify the applicability of these changes. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that generate or transport of hazardous waste, and that treats, stores, or disposes of hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies applicable to this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 38:005. Definitions related to 401 KAR Chapter 38.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 40 CFR 260.10, 270.2

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

NECESSITY, FUNCTION, AND CONFORMITY: This chapter implements provisions of KRS 224.46-520 and 224.46-530 relating to hazardous waste permits. This administrative regulation defines essential terms that are used in this chapter. The majority of terms defined in this administrative regulation are equivalent to federal terms contained in 40 CFR Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 38 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the begin-

ning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "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.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for

the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a) 1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "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.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "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.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; ~~or~~ and

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" 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, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR

34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "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.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure ~~and postclosure~~ cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) ~~["Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).~~

~~(59)~~ "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

~~(59)~~ ~~(60)~~ "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR

35:100.

(60) [(64)] "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(61) [(62)] "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266; and

(d) That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(62) [(63)] "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63) [(64)] "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(64) [(65)] "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65) [(66)] "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 (for example, transport vehicle) and a boiler or industrial furnace.

(66) "Disposal" shall have the meaning specified in KRS 224.01-010.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) ["Disposal" shall have the meaning specified in KRS 224.01-010.

(69) "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.

(69) [(70)] "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.

(70) [(71)] "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(71) [(72)] "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.

(72) [(73)] "Draft permit" shall have the same meaning as "proposed permit".

(73) [(74)] "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(74) [(75)] "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(75) [(76)] "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(76) [(77)] "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(77) [(78)] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(78) [(79)] "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(79) [(80)] "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) [(81)] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) [(82)] "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(82) [(83)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(83) [(84)] "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 **401 KAR 34:275. [this administrative regulation.]**

(84) [(85)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85) [(86)] "Existing" 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.

(86) [(87)] "Existing component" shall have the same meaning as "existing tank system."

(87) [(88)] "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) [(89)] "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(89) [(90)] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(90) [(91)] "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation 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 site or installation of the tank system to be completed within a reasonable time.

(91) [(92)] "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(92) [(93)] "Face amount" means the total amount the insurer is obligated to pay under the policy.

(93) [(94)] "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example [e.g.], one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(94) "Facility mailing list" means the mailing list for a facility maintained in accordance with Section 7(3)(a)4c of 401 KAR 38:050.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions

in Section 5 of 401 KAR 32:030.

(98) "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.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "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.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) ~~"Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.~~

~~(114)~~ **"Groundwater"** means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(114) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

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

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

(118) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(119) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

~~[(118) "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.~~

~~[(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.]~~

~~[(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.~~

~~[(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.~~

~~[(122) "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.~~

~~[(123) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.~~

~~[(124) [(122)] "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.~~

~~[(125) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.]~~

~~[(125) [(124)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the~~

present.

~~[(126) [(125)] "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.~~

~~[(127) [(126)] "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).~~

~~[(128) [(127)] "In existence" shall have the same meaning as "existing."~~

~~[(129) [(128)] "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.~~

~~[(130) [(129)] "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.~~

~~[(131) [(130)] "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.~~

~~[(132) [(131)] "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.~~

~~[(133) [(132)] "In situ sampling systems" means nonextractive samplers or in-line samplers.~~

~~[(134) [(133)] "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.~~

~~[(135) [(134)] "In vapor service" shall have the same meaning as "in gas service."~~

~~[(136) [(135)] "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.~~

~~[(137) [(136)] "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.~~

~~[(138) [(137)] "Incinerator" means any enclosed device that:~~

~~(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or~~

~~(b) Meets the definition of infrared incinerator or plasma arc incinerator.~~

~~[(139) [(138)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.~~

~~[(140) [(139)] "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.~~

~~[(141) [(140)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.~~

~~[(142) [(141)] "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of~~

materials or energy:

- (a) Cement kilns;
- (b) Lime kilns;
- (c) Aggregate kilns;
- (d) Phosphate kilns;
- (e) Coke ovens;
- (f) Blast furnaces;
- (g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);
- (h) Titanium dioxide chloride process oxidation reactors;
- (i) Methane reforming furnaces;
- (j) Pulping liquor recovery furnaces;
- (k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
- (l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or
- (m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(143) [(142)] "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(144) [(143)] "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(145) [(144)] "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(146) [(145)] "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(147) [(146)] "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(148) [(147)] "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(149) [(148)] "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(150) [(149)] "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

[(150)] "IUC well" means a ~~underground injection control well as provided in 40 CFR Part 144.~~

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of

various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(158) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

~~[(158)] "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.]~~

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "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.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county,

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urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "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.

(169) **"Manifest" shall have the meaning specified in KRS 224.01-010.**

(170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

~~[(170) "Manifest" shall have the meaning specified in KRS 224.01-010.]~~

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) **"Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.**

(175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

~~[(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.]~~

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) **"New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.**

(180) "New tank component" shall have the same meaning as "new tank system."

(181) ~~[(180)]~~ "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section

4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

~~[(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.]~~

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "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.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other

active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) **"Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.**

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

~~[(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit by rule, registered permit by rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.]~~

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for **hazardous [solid]** waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in **401 KAR Chapter 31 [40 CFR Part 264]**.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of

the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

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

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "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.

(220) "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.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes 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 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "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.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) **"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.**

(252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

~~[(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.]~~

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "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.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "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.

(264) **"Storage" shall have the meaning specified in KRS 224.01-010.**

(265) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(266) ~~[(265)]~~ "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

~~[(266) "Storage" shall have the meaning specified in KRS 224.01-~~

040.]

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "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.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

~~[(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").]~~

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs 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.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment" shall have the meaning specified in KRS 224.01-010.

(288) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

~~[(289) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.~~

~~[(289) "Treatment" shall have the meaning specified in KRS 224.01-010.]~~

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 CFR Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug

well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(293) [(292)] "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(294) [(293)] "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) [(294)] "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) [(295)] "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

- (d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) [(296)] "Universal waste handler":

(a) Means:

- 1. A generator of universal waste; or
- 2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

- 1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or
- 2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) [(297)] "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) [(298)] "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) [(299)] "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) [(300)] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302) [(301)] "Used oil" shall have the same meaning as KRS 224.50-545.

(303) [(302)] "Used or reused" means a material that is either:

- (a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

- (b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) [(303)] "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.

(305) [(304)] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) [(305)] "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) [(306)] "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.

(308) [(307)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) [(308)] "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) [(309)] "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" shall have the meaning specified in KRS 224.01-010.

(312) [(310)] "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) [(311)] "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314) [(312)] "Waste pile" shall have the same meaning as "pile".

(315) [(313)] "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010) [Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference refer to § 260.11 of this chapter)]. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-

040.]

(316) [(315)] "Wastewaters" means 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:

(a) 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 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

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

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

(317) [(316)] "Wastewater treatment unit" means a device that:

(a) is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) [(317)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

[(318) "Water" or "Waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.]

(320) [(319)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(321) [(320)] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(322) [(321)] "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) [(322)] "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) [(323)] "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| | |
|-----------------|-----------------------------|
| Am. | Amended |
| C | Corrosive waste |
| CAA | Clean Air Act, as amended |
| CFR | Code of Federal Regulations |
| cm | Centimeter |
| cm ² | Centimeter squared |

| | |
|-----------------|---|
| CO | Carbon monoxide |
| CO ₂ | Carbon dioxide |
| CWA | Clean Water Act, as amended |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| DOT | United States Department of Transportation |
| DRE | Destruction and removal efficiency |
| E | Explosive waste |
| eff. | Effective |
| EPA | United States Environmental Protection Agency |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FIA | Federal Insurance Administration |
| FR | Federal Register |
| H | Acutely hazardous waste |
| ha | Hectare |
| HTMR | High temperature metals recovery |
| HSWA | Hazardous and Solid Waste Amendments of 1994 |
| I | Ignitable waste |
| KAR | Kentucky Administrative Regulation |
| kg | Kilogram |
| KPDES | Kentucky Pollution Discharge Elimination System |
| KRS | Kentucky Revised Statute |
| Ky.R. | Administrative Register of Kentucky |
| l | Liter |
| LC | Lethal concentration |
| LD | Lethal dose |
| ml | Milliliter |
| mm | Millimeter |
| N | Normal |
| NESHAPS | National Emissions Standards for Hazardous Air Pollutants |
| NPDES | National Pollutant and Discharge Elimination System |
| PCB | Polychlorinated biphenyl |
| pCi/l | Picocuries per liter |
| PHC | Principal hazardous constituent |
| Permit POHC | Permitted principal organic hazardous constituent |
| PM | Particulate matter |
| POHC | Principal organic hazardous constituent |
| ppm | parts per million |
| Trial POHC | Trial burn principal organic hazardous constituent |
| POTW | Publicly owned treatment works |
| PSD | Prevention of significant deterioration |
| psi | Pounds per square inch |
| psig | Pounds per square inch gauge |
| R | Reactive waste |
| RCRA | Resource Conservation and Recovery Act, as amended |
| SDWA | Safe Drinking Water Act, as amended |
| SEC | Securities and Exchange Commission |
| SIC | Standard Industrial Classification Code |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |
| T | Toxic waste |
| UIC | Underground Injection Control |
| UICP | Underground Injection Control Program |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| USGS | United States Geological Survey |
| USPS | United States Postal Service |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Manage-

ment, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 38. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 38, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

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 Subparts D, E

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

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-520 and 224.46-530 relative to changes and expiration of hazardous waste permits. This administrative regulation is equivalent to federal standards established in 40 CFR 270 Subparts D and E except for: Section 1(2) of this administrative regulation, which adds a reference to applicable statutory requirements contained in KRS 224.40-330; Section 4(1)(d) of this administrative regulation, which is added to allow the Cabinet to revoke a permit upon violation of KRS Chapter 224 and applicable state regulations; Section 5(5) of this administrative regulation, which is added to address nerve and blister agents as identified by KRS 224.50-130; and Section 6(1)(a) of this administrative regulation, which clarifies fee requirements for continuance of an expired permit. In Sections 2 and 3 of this administrative regulation, Kentucky has chosen to adopt previous federal permit modification procedures, rather than current federal procedures. U.S. EPA has approved states to use either method. Use of this previous permit modification procedure provides consistency with other Kentucky environmental programs.

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) 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 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 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 (d) of this subsection are causes for modification but not revocation and reissuance of permits. Paragraphs (a) to (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 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.

2. When the cabinet receives notification of expected closure

under Section 4 of 401 KAR 34:070 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;

b. Modification of an extended postclosure care period under Section 7 of 401 KAR 34:070;

c. Continuation of security requirements under Section 7(2) of 401 KAR 34:070; or

d. Permission to disturb the integrity of the containment system under Section 7(3) of 401 KAR 34:070.

3. When the permittee has filed a request under Section 4 of 401 KAR 34:120 for a variance to the level of financial responsibility or when the cabinet demonstrates under Section 5 of 401 KAR 34:120 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) Notwithstanding 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 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 Subsection 2(1)(e) and (f) of this Section, 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 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 401 KAR 34:176. The new owner or operator shall demonstrate compliance with the requirements in 401 KAR 34:080 to 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 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 401 KAR 34:176 as of the date of demonstration. Past performance as specified in Section 2(20) of 401 KAR 38:090 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 specify the changes being made to permit conditions or supporting documents referenced by the permit, and shall explain why they are necessary. Along with the notice, the permittee shall 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 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" (July 1996) is hereby incorporated by reference. This form

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[application] is available at the Hazardous Waste Branch, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between 8 a.m. and 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:

CLASSIFICATION OF PERMIT MINOR 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. <u>To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive waste.</u> | X | |
| 4. Changes to analytical quality assurance or the quality control plan to conform with agency administrative regulations. | X | |
| 5. [4-] Changes in the training plan, except to decrease the amount of training or type of training. | X | |
| 6. [5-] Changes in names, address or phone number of coordinators or other persons or agencies identified in the contingency plan. | X | |
| 7. [6-] Changes that the construction quality assurance officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design standards. | | X |
| 8. [7-] Other construction quality assurance 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 | X | |

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| or analysis procedures or monitoring schedule. | |
| 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 occurring 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 treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under Section 4(4) and (5) of 401 KAR 34:070. | X |
| (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 | |

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| | capacity is not increased. | | | | eration during the shutdown period for determining operational readiness after construction. | |
| 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. Minor changes in the operating requirements set in the permit for conducting a trial burn. | X |
| 2. | Changes in response action plan. | X | | | 3. Minor changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn. | X |
| a. | Increase in action leakage rate. | X | | | (m) <u>Containment Buildings:</u> | |
| b. | Changes in specific response reducing its frequency or effectiveness. | X | | | <u>Modification or addition of containment building units resulting in up to 25% increase in the facility's containment building storage or treatment capacity.</u> | X |
| c. | Other changes. | X | | | 2. <u>Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.</u> | X |
| 3. | Other changes. | X | | | 3. <u>Replacement of a containment building that meets the same design standards provided:</u> | |
| (i) | Enclosed Waste Piles: | | | | a. <u>The unit capacity is not increased;</u> | X |
| 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 | | | or | |
| 2. | <u>Conversion of an enclosed waste pile to a containment building unit.</u> | X | | | b. <u>The replacement containment building meets the same conditions in the permit.</u> | X |
| (j) | Landfills and Unenclosed Waste Piles: | | | | 4. <u>Modification of a containment building management practice.</u> | X |
| 1. | Modifications of unconstructed units to comply with 401 KAR 34:210. | X | | | 5. <u>Storage or treatment of different wastes in containment buildings that do not require additional or different management practices.</u> | X |
| 2. | Changes in response action plan. | X | | | (n) <u>Corrective Action:</u> | |
| a. | Increase in action leakage rate. | X | | | 1. <u>Approval of a corrective action management unit pursuant to Section 1 of 401 KAR 34:287</u> | X |
| b. | Change in a specific response reducing its frequency or effectiveness. | X | | | 2. <u>Approval of a temporary unit or time extension for a temporary unit pursuant to Section 2 of 401 KAR 34:287.</u> | X |
| c. | Other changes in response action plan. | X | | | | |
| 3. | Other changes. | X | | | | |
| (k) | 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) | Incinerators - Shutdown and Trial Burn: | | | | | |
| 1. | Authorization of up to an additional 720 hours of waste incin- | 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.)

(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 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 KRS 224.46-016 through 224.46-018); 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 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.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed amendments affect owners and operators of hazardous waste facilities that change hands, or whose permits expire.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area

in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff will have an increased workload in order to process the newly regulated entities. The increase in workload will also increase costs.

2. Continuing costs or savings: Once the new entities are processed, there should not be any extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered. These changes are consistent with federal changes.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with current federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: There will be no effects on public health or the environmental welfare without the implementation of this administrative regulation.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was used. This administrative regulation applies to owners and operators of hazardous waste facilities that change hands or whose permits expire. Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments adopt changes to provisions governing expiration of hazardous waste permits. These changes are necessary to maintain consistency between state and federal programs. The additions have been made to clarify the applicability of these standards. In addition, the regulation has been modified to reflect the requirements of regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste facilities that change hands, or whose permits expire.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. Any state, county, or local government office that manages hazardous waste facilities will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

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

401 KAR 39:005. Definitions related to 401 KAR Chapter 39.

RELATES TO: KRS 224.01, 224.10, 224.46, 40 CFR 260.10

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: This chapter implements provisions of KRS 224.46-510 and establishes the general provisions applicable to generators of hazardous waste. [KRS 224.10-100(29) states that the cabinet may provide by administrative regulations for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. This chapter establishes a fee schedule for hazardous waste management.] This administrative regulation defines essential terms that are used in this chapter. The majority of terms defined in this administrative regulation are equivalent to federal terms contained in 40 CFR Parts 260 through 299. Some terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 39 shall have the meanings given in this Section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being

affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfill and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "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.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electri-

cally connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "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.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "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.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; or [and]

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" 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, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an

organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "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.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure ~~[and postclosure]~~ cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

~~(58) ["Current plugging and abandonment cost estimates"] as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).~~

~~(59)]~~ "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

~~(59) [(60)]~~ "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

~~(60) [(64)]~~ "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of

401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(61) [(62)] "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266; and

(d) That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

(62) [(63)] "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(63) [(64)] "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(64) [(65)] "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(65) [(66)] "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 (for example, transport vehicle) and a boiler or industrial furnace.

(66) [(67)] "Disposal" shall have the meaning specified in KRS 224.01-010.

(67) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(68) [(68)] "Disposal" shall have the meaning specified in KRS 224.01-010.

(69) [(69)] "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.

(69) [(70)] "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.

(70) [(71)] "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(71) [(72)] "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.

(72) [(73)] "Draft permit" shall have the same meaning as "proposed permit".

(73) [(74)] "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials

and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(74) [(75)] "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

(75) [(76)] "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(76) [(77)] "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(77) [(78)] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(78) [(79)] "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(79) [(80)] "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) [(81)] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) [(82)] "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(82) [(83)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(83) [(84)] "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 401 KAR 34:275. ~~(this administrative regulation.)~~

(84) [(85)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85) [(86)] "Existing" 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.

(86) [(87)] "Existing component" shall have the same meaning as "existing tank system."

(87) [(88)] "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) [(89)] "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or
 2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.
- (89) [(90)] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.
- (90) [(91)] "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:
- (a) A continuous on-site physical construction or installation 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 site or installation of the tank system to be completed within a reasonable time.
- (91) [(92)] "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.
- (92) [(93)] "Face amount" means the total amount the insurer is obligated to pay under the policy.
- (93) [(94)] "Facility" means:
- (a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example [e.g.], one (1) or more landfills, surface impoundments, or combinations of them).
 - (b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.
- (94) "Facility mailing list" means the mailing list for a facility maintained in accordance with Section 7(3)(a)4c of 401 KAR 38:050.
- (95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.
- (96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.
- (97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.
- (98) "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.
- (99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.
- (100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.
- (101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.
- (102) "Floating membrane cover" means a cover consisting of a

- synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.
- (103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.
- (104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.
- (105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.
- (106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.
- (107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.
- (108) "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.
- (109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.
- (110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.
- (111) "Generator" shall have the meaning specified in KRS 224.01-010.
- (112) "Governing body" shall have the same meaning as KRS 224.01-010.
- (113) ~~"Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.~~
- (114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.
- (114) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.
- (115) "Halogenated organic compounds" or "HOCs" means those compounds having a carbon-halogen bond that are listed under 401 KAR 37:110.
- (116) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.
- (117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.
- (118) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.
- (119) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.
- ~~[(119)] "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.~~
- (119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area

~~in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.]~~

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(122) "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.

(123) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(124) [(122)] "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

~~[(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.]~~

(125) [(124)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) [(125)] "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(127) [(126)] "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) [(127)] "In existence" shall have the same meaning as "existing."

(129) [(128)] "In gas service" means that the piece of equipment

contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) [(129)] "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) [(130)] "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.

(132) [(131)] "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) [(132)] "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) [(133)] "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(135) [(134)] "In vapor service" shall have the same meaning as "in gas service".

(136) [(135)] "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) [(136)] "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(138) [(137)] "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) [(138)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) [(139)] "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) [(140)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(142) [(141)] "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulping liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

~~(143) [(142)]~~ "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

~~(144) [(143)]~~ "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

~~(145) [(144)]~~ "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

~~(146) [(145)]~~ "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

~~(147) [(146)]~~ "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

~~(148) [(147)]~~ "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

~~(149) [(148)]~~ "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

~~(150) [(149)]~~ "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

~~[(150)] "IUC well" means a underground injection control well as provided in 40 CFR Part 144.]~~

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain

after closure.

(157) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(158) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

~~[(159)] "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.]~~

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "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.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "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.

(169) **"Manifest" shall have the meaning specified in KRS 224.01-010.**

(170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

~~[(170) "Manifest" shall have the meaning specified in KRS 224.01-010.]~~

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

~~[(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.]~~

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(180) "New tank component" shall have the same meaning as "new tank system."

(181) [(180)] "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.

~~[(181) "New" means any hazardous waste site or facility that commenced construction after November 10, 1980.]~~

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence

that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a device meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "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.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term

permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

~~[(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.]~~

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCa section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCa section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for hazardous [solid] waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in 401 KAR Chapter 31 [40 CFR Part 261].

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

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

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "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.

(220) "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.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land

PART 2
OF THE
NOVEMBER 1, 1996
ADMINISTRATIVE REGISTER

Due to the size of the November 1, 1996, Administrative Register, it could not be stapled as one document, but is included in two separate stapled documents. This section is Part 2 of the November 1, 1996 Administrative Register.

disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes 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 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "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.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) **"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.**

(252) "Sludge dryer" means any enclosed thermal treatment

device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

~~[(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.]~~

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "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.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "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.

(264) **"Storage" shall have the meaning specified in KRS 224.01-010.**

(265) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(266) ~~[(265)]~~ "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

~~[(266) "Storage" shall have the meaning specified in KRS 224.01-010.]~~

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves

to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "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.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

~~[(278) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").]~~

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs 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.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means:

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment" shall have the meaning specified in KRS 224.01-010.

(288) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(289) [(289)] "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

~~[(289) "Treatment" shall have the meaning specified in KRS 224.01-010.]~~

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 CFR Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(293) [(292)] "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(294) [(293)] "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) [(294)] "Unfit-for-use tank system" means a tank system

that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) ~~[(295)]~~ "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

- (a) Batteries as described in Section 2 of 401 KAR 43:010;
- (b) Pesticides as described in Section 3 of 401 KAR 43:010;
- (c) Thermostats as described in Section 4 of 401 KAR 43:010;

and

- (d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) ~~[(296)]~~ "Universal waste handler":

(a) Means:

- 1. A generator of universal waste; or
- 2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

- 1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or
- 2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) ~~[(297)]~~ "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) ~~[(298)]~~ "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) ~~[(299)]~~ "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) ~~[(300)]~~ "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302) ~~[(301)]~~ "Used oil" shall have the same meaning as KRS 224.50-545.

(303) ~~[(302)]~~ "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) ~~[(303)]~~ "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.

(305) ~~[(304)]~~ "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) ~~[(305)]~~ "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank

wall, the hazardous waste surface, and the floating roof.

(307) ~~[(306)]~~ "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.

(308) ~~[(307)]~~ "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) ~~[(308)]~~ "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) ~~[(309)]~~ "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" shall have the meaning specified in KRS 224.01-010.

(312) ~~[(310)]~~ "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) ~~[(311)]~~ "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314) ~~[(312)]~~ "Waste pile" shall have the same meaning as "pile".

(315) ~~[(313)]~~ "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, (incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010) [Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference refer to § 260.11 of this chapter)]. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

(314) "Waste" shall have the meaning specified in KRS 224.01-010.]

(316) ~~[(315)]~~ "Wastewaters" means 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:

(a) 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 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

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

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as generated; and

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

(317) [(316)] "Wastewater treatment unit" means a device that:

(a) Is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) [(317)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

[(318)] "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.]

(320) [(319)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(321) [(320)] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(322) [(321)] "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) [(322)] "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) [(323)] "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| | |
|-----------------|---|
| Am. | Amended |
| C | Corrosive waste |
| CAA | Clean Air Act, as amended |
| CFR | Code of Federal Regulations |
| cm | Centimeter |
| cm ² | Centimeter squared |
| CO | Carbon monoxide |
| CO ₂ | Carbon dioxide |
| CWA | Clean Water Act, as amended |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| DOT | United States Department of Transportation |
| DRE | Destruction and removal efficiency |
| E | Explosive waste |
| eff. | Effective |
| EPA | United States Environmental Protection Agency |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |

| | |
|-------------|---|
| FIA | Federal Insurance Administration |
| FR | Federal Register |
| H | Acutely hazardous waste |
| ha | Hectare |
| HTMR | High temperature metals recovery |
| HSWA | Hazardous and Solid Waste Amendments of 1994 |
| I | Ignitable waste |
| KAR | Kentucky Administrative Regulation |
| kg | Kilogram |
| KPDES | Kentucky Pollution Discharge Elimination System |
| KRS | Kentucky Revised Statute |
| Ky.R. | Administrative Register of Kentucky |
| L | Liter |
| LC | Lethal concentration |
| LD | Lethal dose |
| ml | Milliliter |
| mm | Millimeter |
| N | Normal |
| NESHAPS | National Emissions Standards for Hazardous Air Pollutants |
| NPDES | National Pollutant and Discharge Elimination System |
| PCB | Polychlorinated biphenyl |
| pCi/l | Picocuries per liter |
| PHC | Principal hazardous constituent |
| Permit POHC | Permitted principal organic hazardous constituent |
| PM | Particulate matter |
| POHC | Principal organic hazardous constituent |
| ppm | parts per million |
| Trial POHC | Trial burn principal organic hazardous constituent |
| POTW | Publicly owned treatment works |
| PSD | Prevention of significant deterioration |
| psi | Pounds per square inch |
| psig | Pounds per square inch gauge |
| R | Reactive waste |
| RCRA | Resource Conservation and Recovery Act, as amended |
| SDWA | Safe Drinking Water Act, as amended |
| SEC | Securities and Exchange Commission |
| SIC | Standard Industrial Classification Code |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |
| T | Toxic waste |
| UIC | Underground Injection Control |
| UICP | Underground Injection Control Program |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| USGS | United States Geological Survey |
| USPS | United States Postal Service |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the chapter. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the

extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was applied in this regulation. Based on compliance with KRS 13A.222. Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS

Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of hazardous waste terms and the clarify certain definitions. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS 13A.222.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages hazardous waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 39. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 39, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

401 KAR 43:005. Definitions related to 401 KAR Chapter 43.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 40 CFR 273.6

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY, FUNCTION, AND CONFORMITY: This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation defines essential terms that are used in this chapter. The majority of terms defined in this administrative regulation are equivalent to federal terms contained in 40 CFR Parts 260 through 299. Some

terms have been clarified to eliminate federal ambiguities and to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart. These terms have been added to clarify requirements and provisions of KRS Chapter 224 and this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 43 shall have the meanings given in this section.

(1) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(2) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(3) "Aboveground tank" means a device meeting the definition of "tank" and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(4) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(5) "Accumulated speculatively" means that a material is accumulated before being recycled.

(a) A material is not accumulated speculatively, if the person accumulating it can show:

1. That the material is potentially recyclable and has a feasible means of being recycled; and

2. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

(b) In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from administrative regulation under Section 4(3) of 401 KAR 31:010 are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

(6) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(7) "Active life" of a facility means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(8) "Active portion" means any area of a facility where treatment, storage, or disposal operations are being or have been conducted and which have not been closed. It includes the treated area of a landfarm and the active face of a landfill. Covered, closed, or inactive portions of landfills, building roofs, and roads are excluded unless designated as "active portions" by the cabinet.

(9) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners shall be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

(10) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(11) "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.

(12) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(13) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(14) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48. The term includes: Part A of the application (Part A); Part B of the application (Part B); notice of intent; administration application; special waste application; or technical application.

(15) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) "As received waste" refers to the waste as received in the shipment from the generator or sample collector.

(17) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(18) "Attenuation" means any decrease in the maximum concentration or total quantity of an applied chemical or biological constituent in a fixed time or distance traveled resulting from a physical, chemical, or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(19) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit or part of a facility, such as the plant manager, superintendent, or person of equivalent responsibility.

(20) "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of Section 4 of 401 KAR 35:281.

(21) "Base flood" means a flood that has a one (1) percent or greater chance of recurring in any year, or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(22) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(23) "Board" shall have the meaning specified in KRS 224.46-810.

(24) "Bodily injury" shall have the meaning given by applicable Kentucky statutes. Bodily injury does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for bodily injury.

(25) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

(a)1. The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

2. The unit's combustion chamber and primary energy recovery section(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section (such as water walls and superheaters) shall be physically formed into one

(1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

3. While in operation, the unit shall maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

4. The unit shall export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(b) The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(26) "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.

(27) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(28) "By-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(29) "Cabinet" shall have the meaning specified in KRS 224.01-010.

(30) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(31) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(32) "Certificate" shall have the meaning specified in KRS 224.46-810.

(33) "Certification" means a statement of professional opinion based upon knowledge and belief.

(34) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements.

(35) "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.

(36) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 34:070 or Section 3 of 401 KAR 35:070.

(37) "Closure" shall have the meaning specified in KRS 224.01-010.

(38) "Component" means either the tank or ancillary equipment of a tank system.

(39) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(40) "Conditionally exempt small quantity generator" means:

(a) A generator who generates no more than 100 kilograms of hazardous waste in a calendar month; or [and]

(b) A generator who generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities no greater than one (1) kilogram. All quantities of that acutely hazardous waste are subject to administrative regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510, 224.46-580, and 224.50-130 to 224.50-413.

(41) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(42) "Connector" 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, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(43) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste is sent.

(44) "Constituent" shall have the same meaning as "hazardous waste constituent."

(45) "Container" means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.

(46) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of 401 KAR 34:245 or 35:245.

(47) "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060;

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or

(c) A significant increase above established background levels, for substances that do not have an established maximum contamination level.

(48) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(49) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(50) "Continuous recorder" means a data recording device recording an instantaneous data value at least once every 15 minutes.

(51) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(52) "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.

(53) "Corrective action management unit" or "CAMU" means an area within a facility that is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. A CAMU shall only be used for the management of remediation wastes

pursuant to implementing such corrective action requirements at the facility.

(54) "Cover" means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

(55) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(56) "Current closure ~~and postclosure~~ cost estimates" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:090 or Section 1(1), (2) and (3) of 401 KAR 35:090.

(57) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(58) ~~"Current plugging and abandonment cost estimates" as used in subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).~~

~~(59)~~ "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c).

~~(59)~~ "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 34:100 or Section 1(1), (2) and (3) of 401 KAR 35:100.

~~(60)~~ ~~[(61)]~~ "Debris" means solid material exceeding a 60mm particle size that is intended for disposal and that is: a manufactured object; plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 401 KAR 37:040, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by Section 6 of 401 KAR 37:040 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

~~(61)~~ ~~[(62)]~~ "Designated facility" means a hazardous waste treatment, storage, or disposal facility which:

(a) Has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38;

(b) Has received a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124; or

(c) Is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266; and

~~(d)~~ That has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020. If a waste is destined to a hazardous waste site or facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving state to accept that waste.

~~(62)~~ ~~[(63)]~~ "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste,

except those management activities described in Section 4(1) and (3) of 401 KAR 43:020 and Section 4(1) and (3) of 401 KAR 43:030. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

~~(63)~~ ~~[(64)]~~ "Destruction or adverse modification" means an alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

~~(64)~~ ~~[(65)]~~ "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

~~(65)~~ ~~[(66)]~~ "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 (for example, transport vehicle) and a boiler or industrial furnace.

~~(66)~~ "Disposal" shall have the meaning specified in KRS 224.01-010.

~~(67)~~ "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

~~(68)~~ ~~["Disposal" shall have the meaning specified in KRS 224.01-010.~~

~~(69)~~ "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.

~~(69)~~ ~~[(70)]~~ "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.

~~(70)~~ ~~[(71)]~~ "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

~~(71)~~ ~~[(72)]~~ "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.

~~(72)~~ ~~[(73)]~~ "Draft permit" shall have the same meaning as "proposed permit".

~~(73)~~ ~~[(74)]~~ "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

~~(74)~~ ~~[(75)]~~ "Effluent Limitations" shall have the same meaning as KRS 224.01-010.

~~(75)~~ ~~[(76)]~~ "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section 3 of 401 KAR 31:030, or they are listed in 401 KAR 31:040 only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

~~(76)~~ ~~[(77)]~~ "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of Section 2 of 401 KAR 38:060, to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

~~(77)~~ ~~[(78)]~~ "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered

Species Act, as amended, 16 USC 1536.

(78) [(79)] "Engineer" shall have the meaning specified in KRS 322.010. An independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be qualified to engage in waste management engineering practices.

(79) [(80)] "EPA acknowledgment of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(80) [(81)] "EPA hazardous waste number" means the number assigned by EPA and the cabinet to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(81) [(82)] "EPA identification number" means the number assigned by EPA or the cabinet to each generator; transporter; or treatment, storage, or disposal facility.

(82) [(83)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

(83) [(84)] "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 401 KAR 34:275. [this administrative regulation.]

(84) [(85)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and the secretary under 401 KAR Chapter 31, or methods in 401 KAR Chapters 47 and 48, approved by the secretary of the cabinet.

(85) [(86)] "Existing" 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.

(86) [(87)] "Existing component" shall have the same meaning as "existing tank system."

(87) [(88)] "Existing facility" shall have the same meaning as "existing hazardous waste site or facility".

(88) [(89)] "Existing hazardous waste site or facility" means a hazardous waste facility which was in operation, or for which continuous construction had commenced, on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

(89) [(90)] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(90) [(91)] "Existing tank system" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(a) A continuous on-site physical construction or installation 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 site or installation of the tank system to be completed within a reasonable time.

(91) [(92)] "External floating roof" means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

(92) [(93)] "Face amount" means the total amount the insurer is obligated to pay under the policy.

(93) [(94)] "Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example [e.g.], one (1) or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under Section 12 of 401 KAR 34:060, all contiguous property under the control of the owner or operator seeking a hazardous waste permit. This definition also applies to facilities implementing corrective action under KRS 224.46-520.

(94) "Facility mailing list" means the mailing list for a facility maintained in accordance with Section 7(3)(a)4c of 401 KAR 38:050.

(95) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(96) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, administrative regulations, or ordinances.

(97) "Final closure" of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030.

(98) "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.

(99) "Fiscal year" means a twelve (12) month period for accounting and other financial purposes.

(100) "Fixed roof" means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

(101) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(102) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

(103) "Floating roof" means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

(104) "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: 100-year floodplain and floodway.

(105) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(106) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(107) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(108) "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.

(109) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(110) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(111) "Generator" shall have the meaning specified in KRS 224.01-010.

(112) "Governing body" shall have the same meaning as KRS 224.01-010.

(113) ~~"Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.~~

~~(114) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.~~

(114) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

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

(116) "Hazardous constituent" shall have the meaning specified in KRS 224.01-010.

(117) "Hazardous debris" means debris that contains a hazardous waste listed in 401 KAR 31:040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

(118) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

(119) "Hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

~~(119) "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.~~

~~(119) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit for use tank system.]~~

(120) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(121) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying

containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed. Hazardous waste management units include: aboveground tank; component; existing tank system or existing component; in-ground tank; new tank system or new tank component; on-ground tank; tank system; underground tank; or unfit-for-use tank system.

(122) "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.

(123) "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method. Hazardous waste site or facility includes: boiler; disposal facility; elementary neutralization unit; incinerator; industrial furnace; hazardous waste transfer facility; injection well; landfill; land treatment facility; miscellaneous unit; pile or waste pile; replacement unit; storage facility; sludge dryer; surface impoundment; tank; thermal treatment facility; totally enclosed treatment facility; treatment facility; or wastewater treatment unit.

(124) ~~(122)~~ "Hazardous waste transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

~~(123) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.]~~

(125) ~~(124)~~ "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

(126) ~~(125)~~ "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(127) ~~(126)~~ "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(128) ~~(127)~~ "In existence" shall have the same meaning as "existing."

(129) ~~(128)~~ "In gas service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(130) ~~(129)~~ "In heavy liquid service" means that the piece of equipment is not in gas service or in vapor service or in light liquid service.

(131) ~~(130)~~ "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.

(132) ~~(131)~~ "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(133) ~~(132)~~ "In situ sampling systems" means nonextractive samplers or in-line samplers.

(134) ~~(133)~~ "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(135) ~~(134)~~ "In vapor service" shall have the same meaning as

"in gas service".

(136) [(+36)] "In-ground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(137) [(+36)] "Inactive portion" means that portion of a hazardous waste site or facility which was not operated after November 19, 1980.

(138) [(+37)] "Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator.

(139) [(+38)] "Incompatible waste" means a hazardous waste which is unsuitable for placement in a particular device or facility because it may cause corrosion or decay of containment materials, or unsuitable for commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(140) [(+39)] "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(141) [(+40)] "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(142) [(+41)] "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulping liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three (3) percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty (20) percent as generated; or

(m) Other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

(143) [(+42)] "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(144) [(+43)] "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(145) [(+44)] "Inner liner" means a continuous layer of material

placed inside a tank or container which protects the construction materials of the tank or container from the contained hazardous waste or reagents used to treat the hazardous waste.

(146) [(+45)] "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(147) [(+46)] "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 CFR Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(148) [(+47)] "Intermittent stream" means a stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year.

(149) [(+48)] "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(150) [(+49)] "Internal floating roof" means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

~~**(150) "IUC well" means a underground injection control well as provided in 40 CFR Part 144.]**~~

(151) "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(152) "Key personnel" shall have the meaning specified in KRS 224.01-010.

(153) "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(154) "Lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Examples of common lamps include, but is not limited to, incandescent, fluorescent, high pressure sodium, mercury vapor, metal halide, high intensity discharge, and neon lamps.

(155) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(156) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface. These facilities are disposal facilities if the waste will remain after closure.

(157) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(158) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

~~**(158) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.]**~~

(159) "Large quantity handler of universal waste" means a universal waste handler who accumulates 5,000 kilograms or more total universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the

calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(160) "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from waste.

(161) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste, hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system shall employ operational controls (daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(162) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(163) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(164) "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.

(165) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

(166) "Local government" means the fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed.

(167) "Major modification" means for hazardous waste sites or facilities, a change in ownership where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control, area occupied, disposal method, or other significant change in the operation of a waste site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040).

(168) "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.

(169) **"Manifest" shall have the meaning specified in KRS 224.01-010.**

(170) "Manifest document number" means the EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

~~[(170) "Manifest" shall have the meaning specified in KRS 224.01-010.]~~

(171) "Maximum organic vapor pressure" means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either:

(a) The local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or

(b) The highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

(172) "Mining overburden returned to the mine site" means any

material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(173) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under Section 6 of 401 KAR 38:060.

(174) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(175) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

~~[(175) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.]~~

(176) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(177) "Net working capital" means current assets minus current liabilities.

(178) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(179) "New facility" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(180) "New tank component" shall have the same meaning as "new tank system."

~~[(181) [(180)] "New tank system" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation commenced after July 14, 1986; however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new tank system is one for which construction commenced after July 14, 1986.~~

~~[(181) "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.]~~

(182) "No detectable organic emissions" means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR Part 60, Appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

(183) "Nonsudden accidental occurrence" means an occurrence that takes place over time and involves continuous or repeated exposure.

(184) "Nonwastewaters" means wastes that do not meet the criteria for wastewaters found in the definition for wastewaters.

(185) "Not detected" means at or below the lower method calibration limit (MCL) in SW-846, Method 8290, Table 1.

(186) "Off-site" means properties noncontiguous to the site.

(187) "On-site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

(188) "Onground tank" means a devise meeting the definition of tank that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(189) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(190) "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.

(191) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, or disposal of wastes.

(192) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(193) "Other site or facility for the land disposal of hazardous waste" means a disposal facility but shall not include a storage facility or a treatment facility.

(194) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(195) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(196) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:080.

(197) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 401 KAR 38:210.

(198) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(199) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream".

(200) **"Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.**

(201) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

~~[(201) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term permit includes permit-by-rule, registered permit-by-rule, research, development, and demonstration permit, and emergency permit. However, the term permit does not include draft permit or proposed permit.]~~

(202) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(203) "Person" shall have the meaning specified in KRS 224.01-010.

(204) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(205) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this subsection.

(206) "Pile" or "waste pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(207) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(208) "Point of compliance" means for ~~hazardous [solid]~~ waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet.

(209) "Point of waste origination" means as follows:

(a) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as identified in **401 KAR Chapter 31 [40 CFR Part 261]**.

(b) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

(210) "Point of waste treatment" means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

(211) "Point source" means any discernible, confined, and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(212) "Pollutant" shall have the same meaning as KRS 224.01-010.

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

(214) "Postclosure care" means the manner in which a facility shall be maintained when it no longer accepts waste for disposal.

(215) "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010.

(216) "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 8 to 11 of 401 KAR 34:070 or Sections 8 to 11 of 401 KAR 35:070.

(217) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(218) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(219) "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.

(220) "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.

(221) "Property damage" shall have the meaning given by applicable Kentucky statutes. Property damage does not include those liabilities which, consistent with the standard industry practices, are excluded from coverage in liability policies for property damage.

(222) "Proposed permit" means a document prepared by the cabinet indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit.

(223) "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010.

(224) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

(225) "Qualified groundwater scientist" means a geologist registered in Kentucky who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields to enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(226) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(227) "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(228) "Reclaimed" means a material that is processed to recover a usable product, or that is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(229) "Recovered material" shall have the meaning specified in KRS 224.01-010.

(230) "Recyclable materials" means hazardous wastes that are recycled.

(231) "Recycled" means a material that is used, reused, or reclaimed.

(232) "Recycling" shall have the meaning specified in KRS 224.01-010.

(233) "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010.

(234) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(235) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under Section 12 of 401 KAR 34:060 and KRS 224.46-520. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing KRS 224.46-520 for releases beyond the facility boundary.

(236) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(237) "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or approved corrective action.

(238) "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or groundwater) which can be expected to exhibit the average properties of the universe or whole.

(239) "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes 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 through 36.

(240) "Resource recovery" means the recovery of material or energy from waste.

(241) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(242) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(243) "Saturated zone" shall have the same meaning as "zone of saturation".

(244) "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49.

(245) "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, or wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, or railroad boxcars), which when worn or superfluous can be recycled.

(246) "Secretary" shall have the meaning specified in KRS 224.01-010.

(247) "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.

(248) "Separator tank" means a device used for separation of two immiscible liquids.

(249) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(250) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(251) **"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.**

(252) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU per pound of sludge treated on a wet-weight basis.

~~[(252) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.]~~

(253) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(254) "Small quantity handler of universal waste" means a universal waste handler who does not accumulate more than 5,000 kilograms of universal waste (batteries, lamps, pesticides, or thermostats, calculated collectively) at any time.

(255) "Solid waste management unit" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(256) "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.

(257) "Sorb" means to either adsorb, absorb, or both.

(258) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(259) "Spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(260) "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(261) "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.

(262) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(263) "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.

(264) **"Storage" shall have the meaning specified in KRS 224.01-010.**

(265) "Storage facility" means a facility or part of a facility at which hazardous waste is held for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on site or off site is not operating or maintaining a storage facility.

(266) [(265)] "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

[(266)] "Storage" shall have the meaning specified in KRS 224.01-010-]

(267) "Substantial business relationship" means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the cabinet.

(268) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(269) "Sump" means any pit or reservoir that meets the definition of tank, and those troughs and trenches connected to it, that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile administrative regulations, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(270) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(271) "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.

(272) "Tangible net worth" means the tangible assets that remain after deducting liabilities; these assets would not include intangibles such as goodwill and rights to patents or royalties.

(273) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of

nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support and which does not meet the definition of any other unit.

(274) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(275) "Termination" shall have the meaning specified in KRS 224.01-010.

(276) "The full amount of the liability coverage to be provided" means the amount of coverage for sudden and nonsudden occurrences required to be provided by the owner or operator, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(277) **"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").**

(278) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

[(278)] "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").]

(279) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Section 4(3)(b) of 401 KAR 43:020 or Section 4(3)(b) of 401 KAR 43:030.

(280) "Thin-film evaporation operation" means a distillation operation that employs 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.

(281) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(282) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(283) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body is a separate transport vehicle.

(284) "Transportation" shall have the meaning specified in KRS 224.01-010.

(285) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(286) "Treatability study" means :

(a) A study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment, if any, is required;
3. The optimal process conditions needed to achieve the desired

treatment;

4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characteristics and volumes of residuals from a particular treatment process.

(b) For the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(c) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(287) "Treatment" shall have the meaning specified in KRS 224.01-010.

(288) "Treatment facility" means a facility or part of a facility using any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(289) [(288)] "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

[(289) "Treatment" shall have the meaning specified in KRS 224.01-010.]

(290) "Underground drinking water source" means:

(a) An aquifer supplying drinking water for human consumption; or

(b) An aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids.

(291) "UIC well" means an underground injection control well as provided in 40 CFR Part 144.

(292) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

(293) [(292)] "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(294) [(293)] "Underlying hazardous constituent" means any constituent listed in Section 1 of 401 KAR 37:040, Table - Treatment Standards for Hazardous Wastes, except vanadium and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific treatment standards.

(295) [(294)] "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(296) [(295)] "Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of 401 KAR Chapter 43:

(a) Batteries as described in Section 2 of 401 KAR 43:010;

(b) Pesticides as described in Section 3 of 401 KAR 43:010;

(c) Thermostats as described in Section 4 of 401 KAR 43:010; and

(d) Spent lamps as described in Section 5 of 401 KAR 43:010.

(297) [(296)] "Universal waste handler":

(a) Means:

1. A generator of universal waste; or

2. The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

1. A person who treats (except under the provisions of Sections 4(1) or (3) of 401 KAR 43:020 or Sections 4(1) or (3) of 401 KAR 43:030), disposes of, or recycles universal waste; or

2. A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(298) [(297)] "Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(299) [(298)] "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(300) [(299)] "Unsaturated zone" shall have the same meaning as "Zone of aeration".

(301) [(300)] "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(302) [(301)] "Used oil" shall have the same meaning as KRS 224.50-545.

(303) [(302)] "Used or reused" means a material that is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material shall not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(304) [(303)] "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.

(305) [(304)] "Vapor recovery system" means that equipment, device, or apparatus capable of collecting vapors and gases discharged from a storage tank, and a vapor processing system capable of affecting such vapors and gases so as to prevent their emission into the atmosphere.

(306) [(305)] "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

(307) [(306)] "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.

(308) [(307)] "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(309) [(308)] "Volatile organic concentration" or "VO concentration" means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of Section 4 of 401 KAR 35:281.

(310) [(309)] "Washout" means the carrying away of waste by waters as a result of flooding.

(311) "Waste" shall have the meaning specified in KRS 224.01-010.

(312) [(310)] "Waste boundary" means the outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

(313) [(311)] "Waste determination" means performing all applicable procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine whether a hazardous waste meets standards specified in 401 KAR Chapter 35. Examples of a waste determination include performing the procedures in accordance with the requirements of Section 4 of 401 KAR 35:281 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

(314) [(312)] "Waste pile" shall have the same meaning as "pile."

(315) [(313)] "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated in 40 CFR 260.11, which is adopted in Section 3 of 401 KAR 30:010 [Third Edition, September 1986, as amended by Update 1, November 16, 1992 (incorporated by reference refer to § 260.11 of this chapter)]. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

[(314)] "Waste" shall have the meaning specified in KRS 224.01-010-].

(316) [(315)] "Wastewaters" means 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:

(a) 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 1 of 401 KAR 37:040 in Table Treatment Standards for Hazardous Waste;

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

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

(317) [(316)] "Wastewater treatment unit" means a device that:

(a) is part of a wastewater treatment facility that is subject to administrative regulation under either section 402 or 307(b) of the CWA;

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

(c) Meets the definition of tank or tank system in this administrative regulation.

(318) "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010.

(319) [(317)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

[(318)] "Water" or "Waters of the Commonwealth" shall have the

meaning specified in KRS 224.01-010-].

(320) [(319)] "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(321) [(320)] "Wetlands" means land that has a predominance of hydric soils and is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(322) [(321)] "Zone of aeration" means that region of the soil or rock between the land surface and the nearest saturated zone in which the interstices are occupied partially by air.

(323) [(322)] "Zone of engineering control" means an area under the control of the owner or operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(324) [(323)] "Zone of saturation" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled with liquid.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 31 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| Am. | Amended |
|-----------------|---|
| C | Corrosive waste |
| CAA | Clean Air Act, as amended |
| CFR | Code of Federal Regulations |
| cm | Centimeter |
| cm ² | Centimeter squared |
| CO | Carbon monoxide |
| CO ₂ | Carbon dioxide |
| CWA | Clean Water Act, as amended |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 |
| DOT | United States Department of Transportation |
| DRE | Destruction and removal efficiency |
| E | Explosive waste |
| eff. | Effective |
| EPA | United States Environmental Protection Agency |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FIA | Federal Insurance Administration |
| FR | Federal Register |
| H | Acutely hazardous waste |
| ha | Hectare |
| HTMR | High temperature metals recovery |
| HSWA | Hazardous and Solid Waste Amendments of 1994 |
| I | Ignitable waste |
| KAR | Kentucky Administrative Regulation |
| kg | Kilogram |
| KPDES | Kentucky Pollution Discharge Elimination System |
| KRS | Kentucky Revised Statute |
| Ky.R. | Administrative Register of Kentucky |
| l | Liter |
| LC | Lethal concentration |
| LD | Lethal dose |
| ml | Milliliter |
| mm | Millimeter |
| N | Normal |
| NESHAPS | National Emissions Standards for Hazardous Air Pollutants |

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| | |
|-------------|---|
| NPDES | National Pollutant and Discharge Elimination System |
| PCB | Polychlorinated biphenyl |
| pCi/l | Picocuries per liter |
| PHC | Principal hazardous constituent |
| Permit POHC | Permitted principal organic hazardous constituent |
| PM | Particulate matter |
| POHC | Principal organic hazardous constituent |
| ppm | parts per million |
| Trial POHC | Trial burn principal organic hazardous constituent |
| POTW | Publicly owned treatment works |
| PSD | Prevention of significant deterioration |
| psi | Pounds per square inch |
| psig | Pounds per square inch gauge |
| R | Reactive waste |
| RCRA | Resource Conservation and Recovery Act, as amended |
| SDWA | Safe Drinking Water Act, as amended |
| SEC | Securities and Exchange Commission |
| SIC | Standard Industrial Classification Code |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |
| T | Toxic waste |
| UIC | Underground Injection Control |
| UICP | Underground Injection Control Program |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| USGS | United States Geological Survey |
| USPS | United States Postal Service |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the regulation. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or savings by promulgating the amendments to this regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes definitions of universal waste terms and the clarifies certain definitions. This regulation is necessary to maintain consistency between state and federal programs.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages universal waste.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 43. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 43, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

401 KAR 43:030. Standards for large quantity handlers of universal waste.

RELATES TO: KRS 224.10, 224.40, 224.46, 40 CFR Part 273 Subpart C

STATUTORY AUTHORITY: KRS 224.10, 224.46-510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510(1) requires the cabinet to promulgate regulations which establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) provides that the cabinet shall establish classes or categories of hazardous waste reflecting the relative degree of hazard. This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation establishes standards for large quantity handlers of universal waste. **This administrative regulation is equivalent to federal standards established in 40 CFR 273 Subpart C except for: Section 2(3) of this administrative regulation, which adds language to clarify that wastes treated as hazardous may be treated on site in accordance with applicable state hazardous waste regulations; and Section 3(2)(c) of this regulation, which requires submittal of the county name, latitude, and longitude for entry into the state database. This administrative regulation includes provisions for spent lamps not addressed by federal regulations. In response to U.S. EPA recommendations, Kentucky has included spent lamps as a universal waste to provide reduced standards for management of this high volume, low toxicity hazardous waste.**

Section 1. Applicability. This administrative regulation applies to large quantity handlers of universal waste.

Section 2. Prohibitions. A large quantity handler of universal waste is:

- (1) Prohibited from disposing of universal waste;
- (2) Prohibited from diluting or treating universal waste, except by

responding to releases as provided in Section 8 of this administrative regulation or by managing specific wastes as provided in Section 4 of this administrative regulation; and

(3) Prohibited from treating universal waste on-site. If a large quantity handler of a universal waste wishes to conduct on-site treatment of an accumulated universal waste, the waste will no longer be considered a universal waste and the handler is subject to the provisions of 401 KAR Chapters 32 through 39.

Section 3. Notification. (1)(a) Except as provided in subsection (1)(b) and (c) of this section, a large quantity handler of universal waste shall send a written notification of universal waste management to the cabinet, in accordance with Section 3 of 401 KAR 32:010, and received an EPA Identification Number, before accumulating 5,000 kilograms of universal waste.

(b) A large quantity handler of universal waste who has already notified the cabinet [EPA] of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(c) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in Section 3(1)(a) of 401 KAR 43:010 and who has sent notification to EPA as required by 40 CFR Part 165 is not required to notify the cabinet for those recalled universal waste pesticides under this section.

(2) This notification shall include:

(a) The universal waste handler's name and mailing address;

(b) The name and business telephone number of the person at the universal waste handler's site who shall be contacted regarding universal waste management activities;

(c) The address or physical location of the universal waste management activities, including the county name and latitude/longitude;

(d) A list of all of the types of universal waste managed by the handler (for example, batteries, lamps, pesticides, thermostats);

(e) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste (for example, batteries, lamps, pesticides, thermostats) the handler is accumulating above this quantity.

Section 4. Waste Management. (1) A large quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(a) A large quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions.

(b) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but shall be immediately closed after removal):

1. Sorting batteries by type;
2. Mixing battery types in one container;
3. Discharging batteries so as to remove the electric charge;
4. Regenerating used batteries;
5. Disassembling batteries or battery packs into individual batteries or cells;
6. Removing batteries from consumer products; or
7. Removing electrolyte from batteries.

(c) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed above, shall determine whether the electrolyte or

other waste exhibit a characteristic of hazardous waste identified in 401 KAR Chapter 31.

1. If the electrolyte or other waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of 401 KAR Chapter 30 through 38. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to 401 KAR Chapter 32.

2. If the electrolyte or other waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local waste regulations.

(2) A large quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(a) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions; or

(b) A container that does not meet the requirements of paragraph (a) of this subsection, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (a) of this subsection; or

(c) A tank that meets the requirements of 401 KAR 35:190, except for Section 8(3) and Section 11 of 401 KAR 35:190; or

(d) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste shall manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(a) A large quantity handler of universal waste shall contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the thermostat, and shall lack evidence of leakage, spillage, or damage that may cause leakage under reasonably foreseeable conditions.

(b) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

1. Removes the ampules in a manner designed to prevent breakage of the ampules;

2. Removes ampules only over or in a containment device (for example, tray or pan sufficient to contain any mercury released from an ampule in case of breakage);

3. Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of Section 5 of 401 KAR 32:030;

4. Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of Section 5 of 401 KAR 32:030;

5. Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

6. Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

7. Stores removed ampules in closed, nonleaking containers that are in good condition; and

8. Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation.

(c)1. A large quantity handler of universal waste who removes mercury-containing ampules from thermostats shall determine whether the following exhibit a characteristic of hazardous waste identified in 401 KAR 31:030:

a. Mercury or clean-up residues resulting from spills or leaks; or
b. Other waste generated as a result of the removal of mercury-containing ampules (for example, remaining thermostat units).

2. If the mercury, residues, or other waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of 401 KAR Chapters 30 through 38. The handler is considered the generator of the mercury, residues, or other waste and is subject to 401 KAR Chapter 32.

3. If the mercury, residues, or other waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state and local waste regulations.

(4)(a) A large quantity handler of universal waste shall manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.

(b) A large quantity handler of universal waste lamps shall not treat (for example, break, disassemble, or crush) universal waste lamps, except as provided in Section 2 of this administrative regulation.

(c) A large quantity handler of universal waste lamps shall manage a release from universal waste lamps as required by Section 8 of this administrative regulation.

Section 5. Labeling and Marking. A large quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified below:

(1) Universal waste batteries (for example, each battery), or a container or tank in which the batteries are contained, shall be labeled or marked clearly with the following phrase: "Universal Waste - Batteries;"

(2) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Section 3(1)(a) of 401 KAR 43:010 are contained shall be labeled or marked clearly with:

(a) The label that was on or accompanied the product as sold or distributed; and

(b) The words "Universal Waste - Pesticide(s);"

(3) A container, tank, transport vehicle, or vessel in which unused pesticide products as described in Section 3(1)(b) of 401 KAR 43:010 are contained shall be labeled or marked clearly with:

(a)1. The label that was on the product when purchased, if still legible;

2. If using the labels described in paragraph (a)1. of this subsection is not feasible, the appropriate label as required under 49 CFR Subpart C; and

(b) The words "Universal Waste - Pesticide(s);"

(4) Universal waste thermostats (that is, each thermostat), or a container or tank in which the thermostats are contained, shall be labeled or marked clearly with the following phrase: "Universal Waste - Mercury Thermostat(s);"

(5) Universal waste lamps (that is, each lamp), or a container in which the lamps are contained, shall be labeled or marked clearly with the following phrase: "Universal Waste - Lamps."

Section 6. Accumulation Time Limits. (1) A large quantity handler of universal waste may accumulate universal waste for no longer than one (1) year from the date the universal waste is generated, or received from another handler, unless the requirements of subsection (2) of this section are met.

(2) A large quantity handler of universal waste may accumulate universal waste for longer than one (1) year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such

quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(3) A large quantity handler of universal waste shall be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(a) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(b) Marking or labeling the individual item of universal waste (for example, each battery) with the date it became a waste or was received;

(c) Maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;

(d) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(e) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(f) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

Section 7. Employee Training. A large quantity handler of universal waste shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

Section 8. Response to Releases. (1) A large quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.

(2) A large quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, shall manage the hazardous waste in compliance with all applicable requirements of 401 KAR Chapters 32 through 39. The handler is considered the generator of the material resulting from the release, and is subject to 401 KAR Chapter 32.

Section 9. Off-site Shipments. (1) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(2) If a large quantity handler of universal waste self-transport universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and shall comply with the transporter requirements of 401 KAR 43:040 while transporting the universal waste.

(3) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR Subpart C, a large quantity handler of universal waste shall package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Transportation Cabinet's regulations under 49 CFR Subpart C;

(4) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler shall ensure that the receiving handler agrees to receive the shipment.

(5) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler shall either:

(a) Receive the waste back when notified that the shipment has been rejected; or

(b) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(6) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he shall contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler shall:

(a) Send the shipment back to the originating handler, or

(b) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(7) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler shall immediately notify the cabinet of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The cabinet will provide instructions for managing the hazardous waste.

(8) If a large quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state and local waste regulations.

Section 10. Tracking Universal Waste Shipments. (1) A large quantity handler of universal waste shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received shall include the following information:

(a) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(b) The quantity of each type of universal waste received (for example, batteries, lamps, pesticides, thermostats); and

(c) The date of receipt of the shipment of universal waste.

(2) A large quantity handler of universal waste shall keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent shall include the following information:

(a) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(b) The quantity of each type of universal waste sent (for example, batteries, lamps pesticides, thermostats); and

(c) The date the shipment of universal waste left the facility.

(3)(a) A large quantity handler of universal waste shall retain the records described in subsection (1) of this section for at least three years from the date of receipt of a shipment of universal waste.

(b) A large quantity handler of universal waste shall retain the records described in subsection (2) of this section for at least three years from the date a shipment of universal waste left the facility.

Section 11. Exports. A large quantity handler of universal waste who sends universal waste to a foreign destination shall:

(1) Comply with the requirements applicable to a primary exporter in Section 4, Section 6(1)(a) through (d), Section 6(1)(f), Section 6(2), and Section 8 of 401 KAR 32:050;

(2) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent; and

(3) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects large quantity handlers that manage universal wastes, which includes: batteries; pesticides; thermostats; and spent mercury containing lamps.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter asked that spent mercury containing lamps that are being shipped be allowed to use a bill of lading rather than a hazardous waste manifest. The cabinet responded by adopting the EPA's Universal Waste Rule in that with that rule, a bill of lading will be an acceptable method for tracking these shipments. The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: certain batteries, pesticides, and thermostats, as well as spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes, reduce disposal costs for hazardous waste facilities, and provide consistency with existing federal standards.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter was concerned about having to report spent mercury containing lamps on the hazardous waste annual report and the annual tax assessment. This commenter also suggested that hazardous waste generators be allowed to store used lamps for up to one year provided: The generator has a contract for lamp recycling and an active recycling program; and the generator institutes safety practices that include safe handling and record keeping of the lamps. The cabinet has adopted the Universal Waste Rule, adding spent mercury containing lamps to the universal waste list. Consistent with this rule, handlers will be allowed to accumulate universal waste for up to one year from the date the waste was generated or received from another handler. Universal waste may be accumulated for more than one year if such activity is solely for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal. In addition, since universal waste is a hazardous waste, spent mercury containing lamps, as well as all other universal waste, would have to be included on the hazardous waste annual report and for the annual hazardous waste assessment. KRS 224.46-580(7) mandates that an assessment be placed upon every generator of hazardous waste and that payment therefore be accompanied by a report or return prescribed by the cabinet. The cabinet cannot alter statutory requirements by regulation. Another commenter wanted the cabinet to allow consolidation points for generators of spent mercury containing lamps if neither storage space nor trained personnel are available at the generation site. The cabinet's response was once again consistent with the Universal Waste Rule: A universal waste handler may send his universal waste to another universal waste handler for accumulation purposes, as provided in this administrative regulation.

2. Second and subsequent years: Same as mentioned above.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout all of Kentucky.

b. Kentucky: One commenter requested recognition for their recycling of spent mercury containing lamps. The cabinet currently holds an annual Governor's Conference on the Environment, at which time the Governor's Environmental Excellence Awards are presented to individuals, organizations, and industries who have made outstanding contributions to preserve and protect Kentucky's natural resources and the environment. This may include those who make extra efforts to recycle rather than dispose such wastes as mercury containing lamps.

7. Assessment of alternative methods; reasons why alternatives were rejected: Unlike the federal EPA, the cabinet accepted the alternative of including mercury containing lamps as universal wastes in response to comments to the Notice of Intent.

8. Assessment of expected benefits of the administrative regulation: The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: batteries, pesticides, thermostats, and spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes and provide consistency with existing federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will maintain protection of public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur.

c. If detrimental effect would result, explain detrimental effect: Improper management of universal waste could harm public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies persons who manage universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps). Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the

owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes management standards for large quantity handlers of universal wastes, which include: certain batteries; pesticides; and thermostats; as well as spent mercury-containing lamps. This regulation is necessary to maintain consistency between state and federal programs and to provide regulatory relief to managers of certain wastes.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that is a large quantity handler of a universal waste (batteries, pesticides, thermostats, and spent mercury containing lamps).

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): State, county, or local government offices that manage universal wastes should save money due to the promulgation of 401 KAR Chapter 43 regulations. If this administrative regulation does not apply to a state, county, or local office of government, there will be no affect.

Other Explanation: None

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

401 KAR 43:040. Standards for universal waste transporters.

RELATES TO: KRS 224.10, 224.40, 224.46, CFR Part 273 Subpart D

STATUTORY AUTHORITY: KRS 224.10, 224.46-510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510(1) requires the cabinet to promulgate regulations which establish standards for generators of hazardous waste by amount of waste generated. KRS 224.46-510(3) provides that the cabinet shall establish classes or categories of hazardous waste reflecting the relative degree of hazard. This chapter establishes minimum standards for persons who generate, handle, transport or receive universal waste. This administrative regulation establishes standards for transporters of universal waste. This administrative regulation is equivalent to federal standards established in 40 CFR 273 Subpart D. This administrative regulation establishes provisions for transportation of universal waste, which includes spent lamps not addressed by federal regulations. In response to U.S. EPA recommendations, Kentucky has included spent lamps as a universal waste to provide reduced standards for management of this high volume, low toxicity, hazardous waste.

Section 1. Applicability. This administrative regulation applies to universal waste transporters.

Section 2. Prohibitions. A universal waste transporter is:

- (1) Prohibited from disposing of universal waste; and
- (2) Prohibited from diluting or treating universal waste, except by responding to releases as provided in Section 5 of this administrative regulation.

Section 3. Waste Management. (1) A universal waste transporter shall comply with all applicable Kentucky Transportation Cabinet's regulations for transport of any universal waste that meets the definition of hazardous material in 49 CFR **Subchapter [Subpart] C**. For purposes of the Transportation Cabinet's regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of 401 KAR Chapter 33. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the Transportation Cabinet's regulations.

(2) Some universal waste materials are regulated by the Transportation Cabinet as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR **Subchapter [Subpart] C**. As universal waste shipments do not require a manifest under 401 KAR Chapter 33, they shall not be described by the DOT proper shipping name "hazardous waste, (I) or (s), n.o.s.", nor shall the hazardous material's proper shipping name be modified by adding the word "waste".

Section 4. Storage Time Limits. (1) A universal waste transporter shall only store the universal waste at a universal waste transfer facility for ten days or less.

(2) If a universal waste transporter stores universal waste for more than ten (10) days, the transporter becomes a universal waste handler and shall comply with the applicable requirements of 401 KAR 43:020 and 43:030 while storing the universal waste.

Section 5. Response to Releases. (1) A universal waste transporter shall immediately contain all releases of universal wastes and other residues from universal wastes.

(2) A universal waste transporter shall determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of 401 KAR Chapters 30 through 39. If the waste is determined to be a hazardous waste, the transporter is subject to 401 KAR Chapter 33.

Section 6. Off-site Shipments. (1) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(2) If the universal waste being shipped off-site meets the Transportation Cabinet's definition of hazardous materials under 49 CFR Subchapter [Subpart] C, the shipment shall be properly described on a shipping paper in accordance with the applicable regulations under 49 CFR Subchapter [Subpart] C.

Section 7. Exports. A universal waste transporter transporting a shipment of universal waste to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter shall ensure that:

(1) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(2) The shipment is delivered to the facility designated by the person initiating the shipment.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects transporters of universal wastes, which includes: batteries; pesticides; thermostats; and spent mercury containing lamps.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter asked that spent mercury containing lamps that are being shipped be allowed to use a bill of lading rather than a hazardous waste manifest. The cabinet responded by adopting the EPA's Universal Waste Rule in that with that rule, a bill of lading will be an acceptable method for tracking these shipments. The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: certain batteries, pesticides, and thermostats, as well as spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent than existing hazardous waste standards. This will encourage proper management of these wastes, reduce disposal costs for hazardous waste facilities, and provide consistency with existing federal standards.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commenter was concerned about having to report spent mercury containing lamps on the hazardous waste annual report and the annual tax assessment.

This commenter also suggested that hazardous waste generators be allowed to store used lamps for up to one year provided: The generator has a contract for lamp recycling and an active recycling program; and the generator institutes safety practices that include safe handling and record keeping of the lamps. The cabinet has adopted the Universal Waste Rule, adding spent mercury containing lamps to the universal waste list. Consistent with this rule, handlers will be allowed to accumulate universal waste for up to one year from the date the waste was generated or received from another handler. Universal waste may be accumulated for more than one year if such activity is solely for the purpose of accumulation as necessary to facilitate proper recovery, treatment, or disposal. In addition, since universal waste is a hazardous waste, spent mercury containing lamps, as well as all other universal waste, would have to be included on the hazardous waste annual report and for the annual hazardous waste assessment. KRS 224.46-580(7) mandates that an assessment be placed upon every generator of hazardous waste and that payment therefore be accompanied by a report or return prescribed by the cabinet. The cabinet cannot alter statutory requirements by regulation. Another commenter wanted the cabinet to allow consolidation points for generators of spent mercury containing lamps if neither storage space nor trained personnel are available at the generation site. The cabinet's response was once again consistent with the Universal Waste Rule: A universal waste handler may send his universal waste to another universal waste handler for accumulation purposes, as provided in this administrative regulation.

2. Second and subsequent years: Same as mentioned above.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout all of Kentucky.

b. Kentucky: One commenter requested recognition for their recycling of spent mercury containing lamps. The cabinet currently holds an annual Governor's Conference on the Environment, at which time the Governor's Environmental Excellence Awards are presented to individuals, organizations, and industries who have made outstanding contributions to preserve and protect Kentucky's natural resources and the environment. This may include those who make extra efforts to recycle rather than dispose such wastes as mercury containing lamps.

7. Assessment of alternative methods; reasons why alternatives were rejected: Unlike the federal EPA, the cabinet accepted the alternative of including mercury containing lamps as universal wastes in response to comments to the Notice of Intent.

8. Assessment of expected benefits of the administrative regulation: The Universal Waste Regulations are being established to address hazardous waste that can be described as low toxicity and high volume. These wastes include: batteries, pesticides, thermostats, and spent mercury containing lamps. Due to the nature of these wastes, the cabinet has proposed standards that are less stringent

than existing hazardous waste standards. This will encourage proper management of these wastes and provide consistency with existing federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The implementation of this regulation will maintain protection of public health and environmental welfare across the commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, detrimental effects could occur.

c. If detrimental effect would result, explain detrimental effect: Improper management of universal waste could harm public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Yes, tiering was used. This administrative regulation applies persons who manage universal wastes (batteries, pesticides, thermostats, and spent mercury containing lamps). Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation establishes management standards for transporters of universal wastes, which include: certain batteries; pesticides; and thermostats; as well as spent mercury-containing lamps. This regulation is necessary to maintain consistency between state and federal programs and to provide regulatory relief to managers of certain wastes.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that is a transporter of a universal waste (batteries, pesticides, thermostats, and spent mercury containing lamps).

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a

comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): State, county, or local government offices that manage universal wastes should save money due to the promulgation of 401 KAR Chapter 43 regulations. If this administrative regulation does not apply to a state, county, or local office of government, there will be no affect.

Other Explanation: None

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

401 KAR 44:005. Definitions related to 401 KAR Chapter 44.

RELATES TO: KRS 224.10, 224.40, 224.43, 224.46, 224.50, 40 CFR Part 279 Subpart A

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.50-545

NECESSITY, FUNCTION, AND CONFORMITY: To implement the provisions of KRS 224.50-545. This administrative regulation defines essential terms that are used in this chapter. **This administrative regulation is equivalent to federal standards established in 40 CFR 279.1. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. The prior federal definition for "marketer" has been added for clarification.**

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise specifically indicated by context, terms in 401 KAR Chapter 44 shall have the meanings given in this Section.

(1) "Aboveground tank" means a tank used to store or process used oil that is not an underground storage tank as defined in 401 KAR 42:005.

(2) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(3) "Do-it-yourselfer used oil collection center" means any site or facility that accepts or [X] aggregates and stores used oil collected only from household do-it-yourselfers.

(4) "Existing tank" means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of the authorized used oil program for the state in which the tank is located. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either

(a) A continuous on-site installation program has begun; or

(b) The owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for installation of the tank to be completed within a reasonable time.

(5) "Household 'do-it-yourselfer' used oil" means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles.

(6) "Household 'do-it-yourselfer' used oil generator" means an individual who generates household "do-it-yourselfer" used oil.

(7) "Marketers" means persons who market used oil fuel.

(8) "New tank" means a tank that will be used to store or process used oil and for which installation has commenced after the effective date of the authorized used oil program for the State in which the tank is located.

(9) "Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosine, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes.

(10) "Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.

(11) "Recycle" shall have the same meaning as KRS 224.50-545.

(12) "Re-refined oil" shall have the same meaning as KRS 224.50-545.

(13) "Re-refining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

(14) **"Tank" means any stationary device, designed to contain an accumulation of used oil and that is constructed of primarily nonearthen materials, (for example, wood, concrete, steel, plastic) which provides structural support.**

(15) "Used oil" shall have the same meaning as KRS 224.50-545.

(16) [(46)] "Used oil aggregation point" means any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

(17) [(46)] "Used oil burner" means a facility where used oil not meeting the specification requirements in Section 2 of 401 KAR 44:010 is burned for energy recovery in devices identified in Section 2 of 401 KAR 44:060.

(18) [(47)] "Used oil collection center" means any site or facility that is registered, licensed, permitted, or recognized by a state, county, or municipal government to manage used oil and accepts or aggregates and stores used oil collected from used oil generators regulated under 401 KAR 44:030 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of Section 5 of 44:020. Used oil collection centers may also accept used oil from household do-it-yourselfers.

(19) [(48)] "Used oil fuel marketer" means any person who conducts either of the following activities:

(a) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(b) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section 2 of 401 KAR 44:010.

(20) [(49)] "Used oil generator" means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(21) [(20)] "Used oil processor or re-refiner" means a facility that processes used oil.

(22) [(24)] "Used oil transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of used oil are held for more than twenty-four (24) hours and not longer than thirty-five (35) days during the normal course of transportation or prior to an activity performed pursuant to Section 1(2)(b) of 401 KAR 44:020. Transfer facilities that store used oil for more than 35 days are subject to regulation under

401 KAR 44:050.

(23) [(22)] "Used oil transporter" means any person who transports used oil, any person who collects used oil from more than one (1) generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (for example, settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 44 shall have the meaning as identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.

| | |
|------|---|
| CFC | Chlorofluorocarbon |
| CFR | Code of Federal Regulations |
| DEP | Kentucky Department for Environmental Protection |
| DIY | Do-it-yourselfer |
| DOT | United States Department of Transportation |
| EPA | United States Environmental Protection Agency |
| KAR | Kentucky Administrative Regulation |
| KRS | Kentucky Revised Statute |
| PCB | Polychlorinated biphenyl |
| ppm | parts per million |
| SPCC | Spill Prevention, Control, and Countermeasures Plan |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This regulation does not affect any entities, because it only defines terms used in the regulation. The regulation was promulgated to comply with KRS 13A.222.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will experience no additional costs or

savings by promulgating this regulation.

2. Continuing costs or savings: No requirements have been imposed to affect costs and savings.

3. Additional factors increasing or decreasing costs: There will be no additional factors affecting costs.

b. Reporting and paperwork requirements: There will be no extra paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on the state and local revenue with the promulgation of this regulation.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No costs are imposed with the promulgation of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives were rejected: There were no other alternatives that would achieve compliance with KRS 13A.222.

8. Assessment of expected benefits of the administrative regulation: The benefit is having the definitions clearly stated at the beginning of each chapter.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Not applicable since no requirements are imposed.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Not applicable.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or policies that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's hazardous waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed amendments establish definitions of used oil terms and the clarification of certain definitions. This regulation is necessary to maintain consistency between state and federal programs.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that manages used oil.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 44. These terms are assimilated from existing state and federal regulatory definitions and existing statutory definitions where applicable.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation only establishes definitions for 401 KAR Chapter 44, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

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

401 KAR 44:040. Standards for used oil transporter and transfer facilities.

RELATES TO: KRS 224.10, 224.40, 224.46, 224.50, 40 CFR Part 279 Subpart E

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510, 224.46-530, 224.50-545

NECESSITY, FUNCTION, AND CONFORMITY: This chapter implements the provisions of KRS 224.46-530 and 224.50-545. This administrative regulation establishes standards for used oil transporters and transfer facilities. This administrative regulation is equivalent to federal standards established in 40 CFR 279 Subpart E except for: Section 1 of this administrative regulation, which precludes the use of used oil as a dust suppressant in accordance with KRS 224.46-530; Section 3(2)(a) of this administrative regulation, which provides for use of a state form that is equivalent to the federal form; Sections 5(4) and 7(4) of this administrative regulation, which require record retention for at least two (2) years in accordance with KRS 224.50-545(13)(a); and Section 6(8)(e) and (f) of this administrative regulation, which have been added to reference statutory requirements for notification and corrective action.

Section 1. Applicability. (1) General. Except as provided in paragraphs (a) through (d) of this subsection, this administrative regulation applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities.

(a) This administrative regulation does not apply to on-site transportation.

(b) This administrative regulation does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in Section 5(1) of 401 KAR 44:020.

(c) This administrative regulation does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in Section 5(2) of 401 KAR 44:020.

(d) This administrative regulation does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor or re-refiner, or burner subject to the requirements of this chapter. Except as provided in paragraphs (a) through (c) of this subsection, this administrative regulation does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(2) Imports and exports. Transporters who import used oil from abroad or export used oil outside of the Commonwealth of Kentucky [United States] are subject to the requirements of this administrative regulation from the time the used oil enters and until the time it exits the United States.

(3) Trucks used to transport hazardous waste. Unless trucks previously used to transport hazardous waste are emptied as described in Section 7 of 401 KAR 31:010 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of Section 1(2) of 401 KAR 44:010, the hazardous waste and used oil mixture is determined not to be hazardous waste.

(4) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of this chapter as indicated in paragraphs (a) through (e) of this subsection:

(a) Transporters who generate used oil shall also comply with 401 KAR 44:020;

(b) Transporters who process or re-refine used oil, except as provided in Section 2 of this administrative regulation, shall also comply with 401 KAR 44:050;

(c) Transporters who burn off-specification used oil for energy recovery shall also comply with 401 KAR 44:060;

(d) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section 2 of 401 KAR 44:010 shall also comply with 401 KAR 44:070; and

(e) Transporters who dispose of used oil shall also comply with 401 KAR 44:080.

Section 2. Restrictions on Transporters Who Are Not Also Processors or Re-refiners. (1) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in subsection (2) of this section, used oil transporters shall not process used oil unless they also comply with the requirements for processors or re-refiners in 401 KAR 44:050.

(2) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (for example, settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor or re-refiner requirements in 401 KAR 44:050.

(3) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor or re-refiner requirements in 401 KAR 44:050.

Section 3. Notification. (1) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of Section 2 of 401 KAR 33:010 shall comply with these requirements and obtain an EPA identification number.

(2) Mechanics of notification. A used oil transporter who has not received an EPA identification number shall obtain one by notifying the cabinet's Hazardous Waste Branch of its used oil activity by submitting either:

(a) A completed DEP Form 7053, Notification of Hazardous Waste Transportation Activities; or

(b) A letter requesting an EPA identification number. The letter shall include the following information:

1. Transporter company name;

2. Owner of the transporter company;

3. Mailing address for the transporter;

4. Name and telephone number for the transporter point of contact;

5. Type of transport activity (that is, transport only, transport and transfer facility, transfer facility only);

6. Location of all transfer facilities at which used oil is stored; and

7. Name and telephone number for a contact at each transfer facility.

Section 4. Used Oil Transportation. (1) Deliveries. A used oil transporter shall deliver all used oil received to:

(a) Another used oil transporter, provided that the transporter has obtained an EPA identification number;

(b) A used oil processing or re-refining facility who has obtained an EPA identification number;

(c) An off-specification used oil burner facility who has obtained an EPA identification number; or

(d) An on-specification used oil burner facility.

(2) DOT Requirements. Used oil transporters shall comply with all applicable requirements under the Transportation Cabinet's regulations in 601 KAR 1:025. Persons transporting used oil that meets the definition of a hazardous material in 601 KAR 1:025 shall comply with all applicable requirements in 601 KAR 1:025.

(3) Used oil discharges.

(a) In the event of a discharge of used oil during transportation, the transporter shall take appropriate immediate action to protect human health and the environment (for example, notify local authorities, dike the discharge area).

(b) If a discharge of used oil occurs during transportation and the cabinet determines that immediate removal of the used oil is necessary to protect human health or the environment, the cabinet may authorize the removal of the used oil by transporters who do not have EPA identification numbers.

(c) A transporter who has discharged used oil shall:

1. Notify the cabinet, as required by KRS 224.01-400(11) and (12); and

2. Report to the cabinet in writing if required by KRS 224.01-400(12).

(d) A transporter shall clean up any used oil discharged that occurs during transportation or take such action as required by KRS 224.01-405 so that the used oil discharge no longer presents a hazard to human health or the environment.

Section 5. Rebuttable Presumption for Used Oil. (1) To ensure that used oil is not a hazardous waste under the rebuttable presumption of Section 1(2)(a)2. of 401 KAR 44:010, the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below 1,000 ppm.

(2) The transporter shall make this determination by:

(a) Testing the used oil; or

(b) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(3) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 401 KAR 31:040. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 401 KAR 31:170).

(a) The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Section 5(3) of 401 KAR 44:020, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.

(b) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(4) Record retention. Records of analyses conducted or information used to comply with subsections (1) through (3) of this section shall be maintained by the transporter for at least two (2) years.

Section 6. Used Oil Storage at Transfer Facilities. Used oil transporters are subject to all applicable spill prevention, control and countermeasures (40 CFR Part 112) in addition to the requirements of this administrative regulation. Used oil transporters are also subject to the underground storage tank (401 KAR Chapter 42) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this administrative regulation.

(1) Applicability. This section applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than twenty-four (24) hours during the normal course of transportation and not longer than thirty-five (35) days. Transfer facilities that store used oil for more than thirty-six (36) days are subject to regulation under 401 KAR 44:050.

(2) Storage units. Owners or operators of used oil transfer facilities shall not store used oil in units other than tanks, containers, or units subject to regulation under 401 KAR Chapter 34 or 35.

(3) Condition of units. Containers and aboveground tanks used to store used oil at transfer facilities shall be:

(a) In good condition (no severe rusting, apparent structural defects or deterioration); and

(b) Not leaking (no visible leaks).

(4) Secondary containment for containers. Containers used to store used oil at transfer facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dikes, berms, or retaining walls; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(5) Secondary containment for existing aboveground tanks. Existing aboveground tanks used to store used oil at transfer facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dike,

berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(6) Secondary containment for new aboveground tanks. New aboveground tanks used to store used oil at transfer facilities shall be equipped with a secondary containment system.

(a) The secondary containment system shall consist of, at a minimum:

1. Dikes, berms or retaining walls; and

2. A floor. The floor shall cover the entire area within the dike, berm, or retaining wall; or

(b) An equivalent secondary containment system.

(c) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(7) Labels.

(a) Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(b) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(8) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of 401 KAR 42:060 which has occurred after the effective date of this administrative regulation, the owner or operator of a transfer facility shall perform the following cleanup steps:

(a) Stop the release;

(b) Contain the released used oil;

(c) Clean up and manage properly the released used oil and other materials;

(d) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service;

(e) Notify the cabinet if required by KRS 224.01-400(11) and (12); and

(f) Perform corrective action in compliance with KRS 224.01-405.

Section 7. Tracking. (1) Acceptance. Used oil transporters shall keep a record of each used oil shipment accepted for transport. Records for each shipment shall include:

(a) The name and address of the generator, transporter, or processor or re-refiner who provided the used oil for transport;

(b) The EPA identification number (if applicable) of the generator, transporter, or processor or re-refiner who provided the used oil for transport;

(c) The quantity of used oil accepted;

(d) The date of acceptance; and

(e) 1. Except as provided in subparagraph 2 of this paragraph, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor or re-refiner who provided the used oil for transport.

2. Intermediate rail transporters are not required to sign the record of acceptance.

(2) Deliveries. Used oil transporters shall keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor or re-refiner, or disposal facility. Records of each delivery shall include:

(a) The name and address of the receiving facility or transporter;

(b) The EPA identification number of the receiving facility or transporter;

(c) The quantity of used oil delivered;

(d) The date of delivery;

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(e)1. Except as provided in subparagraph 2. of this paragraph, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

2. Intermediate rail transporters are not required to sign the record of delivery.

(3) Exports of used oil. Used oil transporters shall maintain the records described in paragraphs(a) through (d) of this subsection for each shipment of used oil exported to any foreign country.

(4) Record retention. The records described in subsections (1) through (3) of this section shall be maintained for at least two years.

Section 8. Management of Residues. Transporters who generate residues from the storage or transport of used oil shall manage the residues as specified in Section 1 of 401 KAR 44:010.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 10, 1996 at 4 p.m.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: The proposed regulation affects used oil transporters and owners and operators of used oil transfer facilities.

2. Direct and indirect costs or savings on the affected entities:

a. Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

b. Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The existing staff of the agency will have an increased workload in order to process the newly regulated entities.

2. Continuing costs or savings: Once the new entities are processed, there will be no extra costs.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

b. Reporting and paperwork requirements: There are no additional paperwork requirements.

4. Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: EPA grants are to be used for the implementation and enforcement of this regulation.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments were received.

b. Kentucky: No public comments were received.

7. Assessment of alternative methods; reasons why alternatives

were rejected: Alternatives were not considered. These changes are consistent with federal standards.

8. Assessment of expected benefits of the administrative regulation: These amendments provide consistency with federal standards.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Implementation of this regulation will help protect human health and the environment.

b. State whether a detrimental effect on the environment and public health would result if not implemented: Yes, there would be detrimental effects without the implementation of this regulation.

c. If detrimental effect would result, explain detrimental effect: Improper management of used oil could result in soil and groundwater contamination that would pose a threat to public health and the environment.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There are no statutes, policies, or regulations that conflict, overlap, or duplicate this regulation.

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

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

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? Tiering is applied to all of Kentucky's waste regulations, based on type and quantity of waste generated and managed and type of management activities performed by the owner or operator.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution.

2. State compliance standards: The proposed regulation adopts changes that apply to used oil transporters. This regulation is necessary to maintain consistency between state and federal programs. In addition, the regulation has been modified to reflect regulation construction specified in KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

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 will affect any state, county, or local office of government that transport or transfer used oil.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224 Subchapter 46 requires that

the cabinet to establish a comprehensive program for the proper management of hazardous waste. The agencies affected by this administrative regulation will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The only expenditures to a state, county, or local office of government will be those expenditures related to compliance with this administrative regulation. If this administrative regulation does not apply to a state, county, or local office of government, there will be no expenditures.

Other Explanation: None

TRANSPORTATION CABINET
Department of Highways
Division of Transportation Planning
Division of Operations
(Amended After Hearing)

603 KAR 5:230. The extended weight coal or coal by-products haul road system and associated bridge weight limits.

RELATES TO: KRS 177.9771, 189.230

STATUTORY AUTHORITY: KRS 177.9771

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the extended weight coal or coal by-products haul road system. KRS 177.9771(1) requires that roads which are currently, or have been in the past, state-maintained toll roads always be included on the extended weight coal or coal by-products haul road system. KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the limits prescribed in KRS 177.9771 on any bridge which may be damaged or destroyed to the point of catastrophic failure if gross vehicle weights exceed certain limits. This administrative regulation identifies in an official order which is incorporated by reference the extended weight coal or coal by-products haul road system and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight limit for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the extended weight coal or coal by-products haul road system and establishes procedures to be followed by local governing bodies requesting this consideration. The official order incorporated by reference sets forth the road segments which were reported to the Transportation Cabinet as having had 50,000 tons or more of coal or coal by-products transported over them during calendar year 1995, the toll roads, and the bridges which are posted for lower weight limits.

Section 1. Definitions. The following terms when used in this administrative regulation or the material incorporated by reference in the administrative regulation shall have the following meanings:

(1) "AASHTO" means the American Association of State Highway and Transportation Officials.

(2) "Catastrophic failure" means a failure that is marked by sudden or unpredictable damage ranging from extreme misfortune to utter ruin.

(3) "CO" means county.

(4) "Coal by-products" means any of the following: fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red

dog), coal slag, and coal cinders.

(5) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.

(6) "FROM" means the beginning milepoint and terminus of a road segment on the extended weight coal or coal by-product haul road system.

(7) "I" means an interstate and defense highway maintained by the Kentucky Department of Highways.

(8) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.

(9) "LN" means line.

(10) "Local governing body" means the fiscal court of any county, the city council or commission of a city of the first through fourth classes or the council of an urban county government.

(11) "P" means parallel bridge.

(12) "PKWY" means parkway.

(13) "TO" means the ending milepoint and terminus of a road segment on the extended weight coal or coal by-product haul road system.

(14) "TY I" means a single unit truck consisting of two (2) single axles.

(15) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(16) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(17) "TY IV" means a tractor-semi-trailer combination with five (5) or more axles.

(18) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.

(1) "TY I" means a single unit truck consisting of two (2) single axles.

(2) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(3) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(4) "TY IV" means a tractor-semi-trailer combination with five (5) or more axles.

(5) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.

(6) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.

(7) "I" means an interstate and defense highway maintained by the Kentucky Department of Highways.

(8) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.

(9) "MP" means milepoint.

(10) "FROM" means the beginning milepoint and terminus of a road segment on the extended weight coal haul road system.

(11) "TO" means the ending milepoint and terminus of a road segment on the extended weight coal haul road system.

(12) "Catastrophic failure" means a failure that is marked by sudden or unpredictable damage ranging from extreme misfortune to utter ruin.

(13) "AASHTO" means the American Association of State Highway and Transportation Officials.

(14) "CO" means county.

(15) "LN" means line.

(16) "Mpt." means milepoint.

(17) "PKWY" means parkway.

(18) "Local governing body" means the fiscal court of any county, the city council or commission of a city of the first through fourth classes or the council of an urban county government.

(19) "Coal by-products" means any of the following: fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red dog), coal slag, and coal cinders.

(20) "P" means parallel bridge.

Section 2. Evaluation of Bridges. (1) The Department of Highways shall determine the bridges on the extended weight coal or coal by-products haul road system which may be damaged or destroyed to the point of catastrophic failure by motor vehicles operating at the weights authorized by KRS 177.9771. This determination shall be based upon an analysis of the bridges in accordance with the guidelines and ratings set forth in the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions. The load factor method of analysis may be used only when a bridge is known to have been designed by that method. When the allowable stress method of analysis is used the maximum allowable stress in steel members shall not exceed sixty-nine (69) percent of the yield strength of the steel.

(2) When the analysis specified in subsection (1) of this section cannot be applied to a bridge, the Department of Highways shall determine if any bridge may be damaged or destroyed to the point of catastrophic failure in accordance with the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions. Before making such a determination the Department of Highways shall conduct an on-site inspection to determine whether the bridge shows appreciable signs of deterioration or distress or otherwise poses a significant hazard to the traveling public.

Section 3. Limiting Weight on Bridges. When the Department of Highways determines that a bridge on the extended weight coal or coal by-products haul road system may be damaged or destroyed to the point of catastrophic failure, the department may adopt a weight limit for the bridge in accordance with the guidelines set forth in the AASHTO Manual for Maintenance Inspection Bridges, 1983 edition and 1984 and 1985 Interim Revisions.

Section 4. Dimension Limits on the Extended Weight Coal Haul Road System. Motor vehicles displaying a valid extended weight coal haul decal or cooperative license plate issued pursuant to KRS 177.9771 and being operated on a road segment set forth in the official order incorporated by reference in Section 10 ~~[Section 6]~~ of this administrative regulation may be operated at, but shall not exceed, the dimension limits ~~[but shall not exceed the dimension limits]~~ set forth in 603 KAR 5:070, Section 4.

Section 5. The Extended Weight Coal and Coal By-product Highway System and Limited Bridges. (1) Except as amended by Official Order 97246 and Official Order 97311, the highways listed in Official Order 97181 ~~[96646]~~, or portions of those highways, are certified as meeting the criteria of and are designated as the extended weight coal and coal by-products haul road system.

(2) The Department of Highways has determined that the bridges listed beneath the highways on the extended weight coal or coal by-products haul road system in Official Order 97181 ~~[96646]~~ may be damaged or destroyed to the point of catastrophic failure as provided in Section 2 of this administrative regulation and has established a weight limit for each as set forth in Section 3 of this administrative regulation.

~~[(2) Official Order 97181 [96646], effective on October 13, 1996, is incorporated by reference in Section 10 (as a part) of this administrative regulation.]~~

Section 6. Restricted Bridge Use. A person shall not operate, or knowingly cause to be operated, on any bridge listed in Official Order 97181 ~~[96646]~~ any vehicle whose gross vehicle weight exceeds the weight limits specified for that bridge.

Section 7. Bridge Posted Weight Limits. In accordance with KRS 189.230(3), the Department of Highways shall post the gross vehicle weight limits for each bridge listed in Official Order 97181 ~~[96646]~~.

Section 8. Additional Bridge Restrictions. A person shall not operate, or knowingly cause to be operated, on any bridge on the extended weight coal or coal by-products haul road system any vehicle whose gross vehicle weight exceeds the limits specified by a notice posted pursuant to KRS 189.230(3).

Section 9. Local Resolutions. Resolutions of local governing bodies issued pursuant to KRS 177.9771(9) making recommendations to the Secretary of Transportation shall be submitted to: Secretary of Transportation, Transportation Cabinet, 501 High Street, State Office Building, Frankfort, Kentucky 40622. The resolution shall set forth a specific description of the road or road segments under consideration. The resolution shall further set forth with specificity those conditions which give rise to inherent and definite hazards or create special conditions which the Secretary of the Transportation Cabinet needs to consider.

Section 10. Incorporation by Reference. (1) The following material [A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions] is hereby incorporated by reference as part of this administrative regulation;

(a) AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions; [and]

(b) Transportation Cabinet Official Order 97181 adopted by the Transportation Cabinet on August, 1996;

(c) Transportation Cabinet Official Order 97246 issued by the Transportation Cabinet on August 30, 1996;

(d) Transportation Cabinet Official Order 97311 issued by the Transportation Cabinet on October 7, 1996.

~~(2) [(3)]~~ A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be viewed at the Transportation Cabinet, Department of Highways, Division of Operations, 7th Floor, State Office Building, 501 High Street, Frankfort, Kentucky. Office hours are 8 a.m. until 4:30 p.m., eastern time on weekdays. Copies of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, N.W., Suite 225, Washington, D.C. 20001.

~~(3) [(4)] [(2)]~~ All of the official orders [Official Order 97181] [96646] incorporated by reference in [Section 5 of] this administrative regulation may be viewed, copied, or obtained from the Office of the Secretary, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4890. The business hours are 8 a.m. until 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: October 7, 1996

FILED WITH LRC: October 9, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: The 6,000 coal transporters operating in Kentucky as well as all other persons using the highways included in the Extended Weight Coal Haul Road System.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation is to be implemented statewide but the largest concentration of roads are located in the coal fields of eastern and western Kentucky. The general perception of the public is that if there are more highways in the Extended Weight Coal Haul Road System, there will be more mining jobs created and therefore an improvement

in the economy. This hypothesis has neither been proven nor disproven. However, it is quite true that the more roads there are in the system, the fewer trucks that will be needed to transport the coal which is mined. This means fewer jobs for the coal transporters and a down-turn in their economy.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: It will cost less for the coal owners to have the coal transported in those areas with road segments in the system. However, there is insufficient Road Fund money to maintain the extended weight roads at what is generally considered to be an acceptable level of service. Therefore, more maintenance is required on all of the vehicles routinely using the roads in the Extended Weight Coal Haul Road System, thus increasing the price of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Savings incurred as a result of being allowed to transport coal at extended weights over additional roads. At the same time a number of roads are being deleted from the system causing an additional cost for the coal transporters who have been operating on those routes. The savings and cost to the industry as a whole should balance. However, individual companies can see a large swing in their cost/savings.

2. Second and subsequent years: Same as 1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The road segments added to the extended weight system will require more maintenance.

1. First year: The cost of additional maintenance for roads added to the system will be thousands of dollars. Almost all the highways which are being deleted from the system will still have to have additional maintenance or reconstruction because of the earlier transportation of coal at extended weights. Therefore, there will be no off-setting savings for the Transportation Cabinet.

2. Continuing costs or savings: Same as 1.

3. Additional factors increasing or decreasing costs: The lifespan of bridges which are used at these extended weights is considerably shortened. Therefore, the cost to the Transportation Cabinet over the life of the extended weight coal haul road system will be additional millions of dollars.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road Fund - Department of Vehicle Regulation, Division of Motor Vehicle Enforcement and Department of Highways.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: It is generally perceived that including roads in the Extended Weight Coal Haul Road System has a positive effect on the economy of a coal producing region, and a neutral to negative effect elsewhere. Conversely, removing roads from the Extended Weight Coal haul Road System (unless all mines in the area are permanently closed) is generally perceived as having a negative impact on the economy in a coal producing region.

(b) Kentucky: See (a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 177.9771 mandates the annual update of the extended weight coal haul road system listing. Therefore, legally there was no alternative to the annual update. However, KY 205 was removed from the Extended Weight Coal Haul Road System because of the extremely unsafe condition of the highway. The Transportation Cabinet chose to remove the road from the Extended Weight Coal

Haul Road System rather than having to close the road to all traffic. In addition, because of the reconstruction of US 23 in Johnson County will be completed later this year, the Transportation Cabinet chose to add two versions of Johnson County in the Official Order. The first version is effective until the completion of US 23 and the second version is effective after the completion of the reconstruction project. This was done to prevent at least one amendment to the administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The roads on the Extended Weight Coal Haul Road System will suffer much more damage than the other state-maintained highways. A road which is not in good condition is much unsafer than one in good condition.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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:

(10) Any additional information or comments: Most of the impacts of the administrative regulation, both positive and negative are mandated by KRS 177.9771. Unless there is a change in state law, there are very few effects generated by the implementation of the administrative regulation.

(11) TIERING: Is tiering applied? Yes. The entire administrative regulation is a tiering of weight and axles allowed on certain roads.

**LABOR CABINET
Department of Workers' Claims
(Amended After Hearing)**

803 KAR 25:012. Resolution of medical fee disputes.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.125, 342.260, 342.325, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to prepare such administrative regulations as he considers necessary to carry on his work and the work of the administrative law judges under KRS Chapter 342. KRS 342.325 requires that questions arising under KRS Chapter 342 which are not settled by agreement of the parties shall be determined by an administrative law judge, and KRS 342.735 requires the commissioner to establish administrative regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate the resolution of medical fee disputes before the administrative law judges.

Section 1. Procedure. (1) Disputes regarding payment, nonpayment, reasonableness, necessity, or work-relatedness of any medical expense, treatment, procedure, statement, or service which has been rendered or will be rendered under KRS Chapter 342 will be resolved by an administrative law judge following the filing of a Form 112 (Medical Fee Dispute).

(2) The Form 112 shall be accompanied by the following items: copies of all disputed bills, supporting affidavit(s) setting forth facts sufficient to show that the movant is entitled to the relief sought, any necessary supporting expert testimony, and any final decision from utilization review or medical bill audit with supporting medical opinion. A single Form 112 may encompass statements, services, and treatment previously rendered as well as future statements, services,

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and treatment of the same nature or for the same condition, if specifically stated.

(3) Any employee, provider of medical services, employer or employer's medical payment obligor may file a Form 112 to seek adjudication of a dispute involving medical expenses.

(4) If no application for adjustment of claim concerning the injury or disease which is the subject of the dispute has been filed, copies of the Form 112 and attachments sufficient to serve all other parties, including the employee, the employer, the medical payment obligor, and the medical provider, shall be filed with the commissioner, who shall make service on all named parties. Opposing parties may thereafter file responses, accompanied by affidavits setting forth facts sufficient to show that the movant is not entitled to the relief sought, within twenty (20) days after service by the commissioner. Responses shall be served on all parties. This dispute will be assigned to the Frankfort Administrative Law Judge motion docket, where it may be summarily decided upon the pleadings or assigned for further proof time and resolution by an administrative law judge.

(5) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the movant shall file a Form 112 with the commissioner and shall also serve copies on all other parties of record. The movant shall further file a motion to join the medical provider(s) as a party to the claim. This motion shall conform with the requirements of 803 KAR 25:010, Section 4.

(6) Following resolution of a workers' compensation claim by opinion or order of an administrative law judge, including an order approving settlement of a disputed claim, a motion to reopen pursuant to 803 KAR 25:010, Section 4(6), shall be filed in addition to the Form 112. Unless utilization review has been initiated the motion to reopen and Form 112 must be filed within thirty (30) days following receipt of a complete statement for services pursuant to 803 KAR 25:096. The motion to reopen and Form 112 shall be served on all parties, upon the employee, even if represented by counsel, and upon the medical providers. When appropriate, the pleadings shall also be accompanied by a motion to join the medical provider as a party. This dispute will be assigned to the Frankfort Administrative Law Judge motion docket, where it may summarily decided upon the pleadings, or be assigned to an administrative law judge for further proof time and final resolution.

(7) If an appeal is pending before the Workers' Compensation Board concerning the injury or disease which is the subject of the dispute, the Form 112 shall be accompanied by a motion for a partial remand to the administrative law judge assigned to the claim, unless entitlement to medical services is dependent upon resolution of issues on appeal. If entitlement to medical services is dependent upon resolution of issues on appeal, the Form 112 shall be accompanied by a motion to the Workers' Compensation Board to hold the Form 112 in abeyance pending a final decision on the appeal.

(8) If the contested expense is subject to utilization review, no medical fee dispute shall be filed prior to completion of the utilization review process. The thirty (30) day period for filing a medical fee dispute is tolled by commencement of the utilization review process. Notice of utilization review shall be provided to all affected parties pursuant to 803 KAR 25:096. The employer or its medical payment obligor shall have thirty (30) days following the final utilization review or medical bill audit decision to file a medical fee dispute.

(9) Repeated filing of identical Form 112's concerning the same subject matter are unnecessary once an administrative law judge has ruled on both the past expenses and the necessity of future expenses. When an order from an administrative law judge encompassing future treatment or expenses becomes final, the medical provider shall not tender future statements for services encompassed by the order to the employer or its medical payment obligor.

(10) Any party aggrieved by a decision of the administrative law judge in a medical fee dispute may appeal to the Workers' Compensation Board by following the procedures set forth in 803 KAR 25:010,

Section 13.

Section 2. Burden of Proof. (1) Prior to a final decision or award establishing an employee's right to medical services for a work-related condition under KRS Chapter 342, the burden of proving entitlement to the service and the reasonableness and necessity of the service shall be upon the employee and the provider of medical services, pursuant to KRS 342.735.

(2) Following a final award or order establishing the employee's right to medical services under KRS Chapter 342, upon receipt of a medical statement comporting with 803 KAR 25:096, the burden of proof regarding any lack of work-relatedness, reasonableness, or necessity falls upon the employer or employer's medical payment obligor.

Section 3. Sanctions. (1) If the administrative law judge determines that proceedings have been brought, caused to be brought, prosecuted or defended without reasonable grounds, the entire cost of the proceedings, including attorneys fees, may be assessed upon the offending party pursuant to KRS 342.310. Sanctions shall be assessed, as appropriate, when an employer or a medical payment obligor challenges bills without reasonable medical or factual foundation, or when a medical provider, without reasonable foundation, submits bills for nonwork-related conditions to an employer or its medical payment obligor. Filing a medical fee dispute prior to exhaustion of any required utilization review or medical bill audit procedures will also subject the movant to sanctions pursuant to KRS 342.310.

Section 4. Expedited Medical Fee Disputes. (1) If prior to the filing of a formal application for adjustment of claim a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer may seek an expedited determination by filing a written request (on Form 120EX), together with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A.

(b) An affidavit of a physician which explains why failure to obtain or undertake the proposed medical care within forty-five (45) days could lead to serious physical or mental disability or death of the employee. The physician's affidavit shall set forth the diagnosis of the patient, the clinical and diagnostic findings upon which the diagnosis is based, the proposed treatment, and detail why immediate initiation of the proposed treatment is necessary. Where feasible, an estimate of the cost of the proposed treatment shall be presented. The format for a physician's affidavit is set forth in Appendix B.

(c) Any other affidavits or authenticated documents necessary to demonstrate that the movant is entitled to the relief sought.

(2) The Form 120EX and attachments shall be filed in triplicate with the commissioner who shall serve copies on all named parties. Respondents to a Form 120EX may file responses within ten (10) days of the date on which the Form 120EX is served by mail. Service shall be deemed complete the third day after mailing by the commissioner. Responses shall be accompanied by affidavits setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.

(3) The chief administrative law judge may refer the matter to an ombudsman to attempt to effectuate a resolution of the dispute.

(4) The administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within seven (7) days after expiration of the response time.

APPENDIX A AFFIDAVIT OF EMPLOYEE

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Affiant, (Name), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns treatment for a condition compensable under the Kentucky Workers' Compensation Act. Affiant further states as follows:

1. Date and time of work-related injury or date on which occupational disease was discovered:
2. Brief description of how injury occurred or how occupational disease was acquired:
3. Date and identity of person to whom notice of injury or occupational disease was given:
4. Medical treatment at issue:
5. Attempts, if any, to obtain approval for contested treatment:

Signature:
STATE OF:
COUNTY OF:

Subscribed and sworn to before me by (name) this (day) day of (month), 19(year).

Notary Public:

My commission expires:

APPENDIX B AFFIDAVIT OF PHYSICIAN EXPEDITED MEDICAL DISPUTE

Affiant (Name), a physician whose area of specialization is (specialization), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns a work-related injury or disease.

(1) The following medical care is required: (describe proposed medical care)

(2) The current working diagnosis is as follows:

(3) The proposed treatment is medically necessary because:

(4) The estimated cost of the proposed treatment is:

Affiant further states that failure of (Name of workers' compensation patient) to obtain or undertake this proposed medical care within the next forty-five (45) days could lead to serious physical or mental disability or death because:

Signature:
W.C. Medical Index No.:
Address:
STATE OF:
COUNTY OF:

Subscribed and sworn to before me by (name) this (day) day of (month), 19(year).

Notary Public:

My commission expires:

Section 5. Forms. (1) Title and edition. Form 112, "Medical Fee Dispute", August 15, 1996 edition and Form 120EX, July 14, 1994 Edition are hereby incorporated by reference in this administrative regulation.

(2) Public notices.

(a) Forms can be inspected and copied at main and branch offices of the Department of Workers Claims.

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - 410 West Chestnut Street, Louisville, Kentucky

40202:

3. Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

4. Pikeville - 101 Summit Drive, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m. local time, Monday through Friday, inclusive for this purpose.

[Section 1. Definition. "Physician" shall have the same meaning as in KRS 342.0014(32).]

Section 2. Procedure. (1) Any employee, provider of medical services, employer or employer's medical payment obligor may seek adjudication of a dispute regarding the payment or nonpayment of any medical expense by filing a Request to Resolve Medical Fee Dispute (Form 112).

(2) A Request to Resolve Medical Fee Dispute (Form 112) may be filed to resolve questions concerning the payment, nonpayment, reasonableness, necessity or work relatedness of any medical expense, treatment, procedure, statement or service performed, rendered, or about to be performed or rendered under KRS Chapter 342.

(3) A Form 112, copies of disputed bills and supporting affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought shall be filed with the commissioner, with sufficient copies to serve all other parties, within thirty (30) days of the date of receipt of a statement for services or within thirty (30) days of the time in which the compensability of a medical expense or treatment is known to be in dispute, whichever first occurs. The commissioner shall serve copies on all named parties unless an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, in which event service shall be made by the movant. Opposing parties may file responses within twenty (20) days after notice of the request to resolve medical fee dispute. A response shall be accompanied by affidavits setting forth facts sufficient to show the movant is not entitled to the relief sought, and shall be served on the other parties.

(4) Requests to resolve medical fee disputes shall be assigned as follows:

(a) If an application for adjustment of claim has not been filed concerning the injury or disease which is the subject of the dispute, the commissioner shall assign the request to the Frankfort administrative law judge motion docket and the request shall be processed in the same manner as other motions in claims to which an administrative law judge has not been permanently assigned.

(b) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the request shall be assigned to the same administrative law judge to whom the application for adjustment of claim has been assigned.

(c) If an award or other final decision has been rendered by an administrative law judge concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion to reopen in accordance with KRS 342.125 and other applicable law and shall initially be placed upon the Frankfort administrative law judge motion docket. Service shall be made upon all opposing parties by the movant.

(d) If an appeal is pending before the board concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion for a partial remand to the administrative law judge who ruled on the application for adjustment of claim, unless entitlement to medical services under KRS 342.020 is dependent upon resolution of the appeal. If entitlement to medical services is dependent upon resolution of the appeal, the request shall be accompanied by a motion to the board to hold the request in abeyance pending a final decision on the appeal.

Section 3. Scope of Request and Burden of Proof. (1) A single request may encompass statements, services and treatment previously rendered as well as future statements, services and treatment of

the same nature, or for the same condition, if noted in the request, in which event the dispute shall be deemed continuing and repeated requests concerning the same subject matter need not be made.

(2) If a final award or decision has not been previously entered establishing the employee's right to medical services under the Act, the burden of proving entitlement shall be upon the employee or provider of medical services, while the burden with respect to unreasonableness and nonnecessity shall fall upon the employer or employer's medical payment obligor.

(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute.

(4) If the administrative law judge determines that such proceedings have been brought, caused to be brought, prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has brought, caused to be brought, prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.

(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of 803 KAR 25:011.

Section 4. Expedited Medical Fee Disputes. (1) If prior to the filing of a formal application for adjustment of claim a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer may seek an expedited determination by filing a written request (on Form 120EX), together with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A.

(b) An affidavit of a physician which explains why failure to obtain or undertake the proposed medical care within forty-five (45) days could lead to serious physical or mental disability or death of the employee. The physician's affidavit shall set forth the diagnosis of the patient, the clinical and diagnostic findings upon which the diagnosis is based, the proposed treatment, and detail why immediate initiation of the proposed treatment is necessary. Where feasible, an estimate of the cost of the proposed treatment shall be presented. The format for a physician's affidavit is set forth in Appendix B.

(c) Any other affidavits or authenticated documents necessary to demonstrate that the movant is entitled to the relief sought.

(2) The Form 120EX and attachments shall be filed in triplicate with the commissioner who shall serve copies on all named parties. Respondents to a Form 120EX may file responses within ten (10) days of the date on which the Form 120EX is served by mail. Service shall be deemed complete the third day after mailing by the commissioner. Responses shall be accompanied by affidavits setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.

(3) The chief administrative law judge may refer the matter to an ombudsman to attempt to effectuate a resolution of the dispute.

(4) The administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within seven (7) days after expiration of the response time.

APPENDIX A EXPEDITED MEDICAL DISPUTE AFFIDAVIT OF EMPLOYEE

Affiant, (Name), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns treatment for a condition compensable under the Kentucky

Workers' Compensation Act. Affiant further states:

1. Date and time of work-related injury or date on which occupational disease was discovered;
2. Brief description of how injury occurred or how occupational disease was acquired;
3. Date and identity of person to whom notice of injury or occupational disease was given;
4. Medical treatment at issue;
5. Attempts, if any, to obtain approval for contested treatment;

Signature:

(Date):

STATE OF:

COUNTY OF:

Subscribed and sworn to before me by (Name) this (day) day of (month), 19-.

Notary Public:

My commission expires:

APPENDIX B EXPEDITED MEDICAL DISPUTE AFFIDAVIT OF PHYSICIAN

Affiant, (Name), a physician whose area of specialization is (specialization), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns a work-related injury or disease.

(1) The following medical care is required: (describe proposed medical care):

(2) The current working diagnosis is as follows:

(3) The proposed treatment is medically necessary because:

(4) The estimated cost of the proposed treatment is:

Affiant further states that failure of (Name of Workers' Compensation Patient) to obtain or undertake this proposed medical care within the next 45 days could lead to serious physical or mental disability or death because:

Signature:

(Date):

W. C. Medical Index No.:

Address:

STATE OF:

COUNTY OF:

Subscribed and sworn to before me by (Name) this (day) day of (month), 19-.

Notary Public:

My commission expires:

Section 5. Forms. (1) Revised Form 112 and Form 120EX are adopted effective October 26, 1992, and are incorporated by reference in this administrative regulation.

(2) Information available:

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort—Perimeter Park West—Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville—Fourth Floor—The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington—950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah—220B North 8th Street, Paducah, Kentucky 42001.

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~~5. Pikeville The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501.~~

~~(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.]~~

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 9, 1996 at noon

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: All injured employees in the Commonwealth of Kentucky with disputes regarding the payment of medical expense, medical providers who provide services for work-related injuries, and medical payment obligers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No significant impact on the cost of living and employment is expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No significant impact on the cost of doing business is expected.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year: None

2. Continuing costs or savings: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative method; reasons why alternatives were rejected: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations as he considers necessary to carry on the work of the department and the work of the administrative law judges under KRS 342.325 requires that questions arising out of KRS Chapter 342 which are not settled by agreement of the parties, shall be determined by an administrative law judge. KRS 342.735 requires the commissioner to establish regulations to expedite the payment of medical expense benefits. This administrative regulation is deemed to be the most reasonable and efficient in setting forth the requirements necessary for an effective and expeditious medical fee dispute process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect is anticipated.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No effect.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: No conflict known.

(a) Necessity of proposed regulation if in conflict: See above.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not appropriate. This proposed regulation applies equally to all employees, medical providers and medical payment obligers in the Commonwealth of Kentucky.

LABOR CABINET

Department of Workers' Claims (Amended After Hearing)

803 KAR 25:096. Selection of physicians and treatment plans.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260, 342.320, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate such administrative regulations as he considers necessary to carry on the work of the department under KRS Chapter 342. KRS 342.735 requires the commissioner to establish administrative regulations to expedite the payment of medical expense benefits. The function of 803 KAR 25:096 is to regulate the selection of physicians and provide for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond ninety (90) days.

(b) Medical treatment that in fact continues for a period of more than ninety (90) days.

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days.

(2) "Physician" shall have the same meaning as in KRS 342.0011(32).

(3) "Designated physician" means the physician selected by the employee for treatment under KRS 342.020. The designated physician shall have sole authority to make referrals, as reasonably necessary, to specialists and appropriate treatment facilities. Except for emergency treatment, only treatment by or on referral from the designated physician shall be compensable.

(4) "Treatment plan" means a written plan which may consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency, and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results, and may be amended, supplemented or changed as conditions warrant.

(5) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to a serious physical or mental disability or death, or medical services which are immediately necessary to alleviate severe pain.

(6) "Statement for services" for the purposes of KRS 342.020(1), means a completed Form HCFA 1500 or, in the case of a hospital, a completed Form UB-92, or successors to such forms prescribed by the Commissioner of Insurance, with an attached copy of legible treatment notes, hospital admission and discharge summary, or other

supporting documentation for the billed medical treatment, procedure, or hospitalization. For pharmaceutical bills, a statement for services means a bill containing at least the following information: identity of prescribed medication, number of units prescribed, date of prescription, and name of prescribing physician.

Section 2. Employer's Obligation to Supply Kentucky Workers' Compensation Designation and Medical Release Card (Form 113). Within ten (10) days following receipt of notice of a work injury or occupational disease causing lost work time or necessitating medical treatment, the medical payment obligor shall mail a Form 113 to the employee, including a self-addressed, postage prepaid envelope for returning the Form 113. Failure by the medical payment obligor to timely mail the form waives any objection to treatment by other than a designated physician prior to receipt by the employee of the form.

Section 3. Employee Selection of Physician. (1) Except for emergency care, all treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the medical payment obligor of the identity of the designated physician by tendering the completed Form 113, including a written acceptance by the designated physician, within ten (10) days after treatment is commenced by that physician.

(2) Within ten (10) days following [Upon] receipt of a Form 113 designating a treating physician, the medical payment obligor shall tender a card to the employee, which shall be presented to medical providers each time that medical services are sought in connection with the work-related injury or occupational disease.

(3) The card shall serve as notice to the medical providers of the identity of the designated physician, who has sole authority to make referrals to treatment facilities or to specialists. The card shall bear the legend "First Designated Physician-Workers' Compensation" and shall further contain the following information: name and telephone number of the first designated physician; name, Social Security number, date of birth, and date of work injury or occupational disease and last exposure of the employee; and name and telephone number of the medical payment obligor. The reverse side of the first designated physician card shall contain a notice that all treatment must be performed by or on referral from the first designated physician and shall further contain space for identification and notification of change of designated physician.

(4) Failure by the medical payment obligor to timely mail the "First Designated Physician" card waives any objection to treatment by other than a designated physician prior to receipt by the employee of the card.

Section 4. Change of Designated Physician. (1) Following initial selection of a designated physician, the employee may change designated physicians once without authorization of the employer or its medical payment obligor. Referral by a designated physician to a specialist shall not constitute a change of designated physician unless the latter physician is specifically selected by the employee as the second designated physician.

(2) Following a decision to change the designated physician, the employee shall complete the back of the first designated physician card and return the card with the name of the second designated physician to the medical payment obligor, which shall issue a second card within ten (10) days.

(3) The card shall bear the legend "Second Designated Physician-Workers' Compensation" and shall further contain the information required on the first designated physician card. The reverse side of the card shall contain a notice that all treatment must be performed by or on referral from the second designated physician and shall further contain a notice that any further change of designated physician will require the written consent of the employer or the administrative law judge.

(4) Failure by the medical payment obligor to timely mail the "Second Designated Physician" card waives any objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) [(3)] Once an employee's two (2) choices of designated physician have been exhausted, he may not, except as required by medical emergency, make additional selections of physicians without the medical payment obligor's written consent or the consent of an administrative law judge. Such consent shall not be unreasonably withheld.

(6) [(4)] If the employer provides medical services through a managed health care system, it may establish alternate methods for provider selection within the managed health care plan.

Section 5. Treatment Plan. (1) A treatment plan shall be prepared when any of the following occur:

(a) Long-term medical care is required as a result of a work-related injury or occupational disease; or

(b) The employee has received treatment with passive modalities, including electronic stimulation, heat/cold packs, massage, ultrasound, diathermy, whirlpool, or similar procedures for a period exceeding sixty (60) days. The treatment plan shall detail the need for such passive treatment, the benefits, if any, derived from such treatment, the risks attendant with termination of the treatment, and the projected period of future treatment; or

(c) An elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program is recommended. The treatment plan shall set forth specific and measurable performance goals for the employee through any surgery, work hardening, or medical rehabilitation program.

(2) The designated physician shall provide a copy of the treatment plan to the medical payment obligor seven (7) days in advance of an elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program. In all other instances when a treatment plan is required, a copy of the treatment plan shall be provided within fifteen (15) days following a request by the medical payment obligor. All amendments, supplements, or changes to a treatment plan shall also be furnished within fifteen (15) days following a request.

(3) Preparation of a treatment plan is a necessary part of the care to be rendered and is an integral part of the fee authorized in the medical fee schedule for the underlying services. No additional fee shall be charged for the preparation of a treatment plan or progress reports, except for the reasonable cost of photocopying and mailing such records.

Section 6. Tender of Statement for Services. As required by KRS 342.020(1), the provider of medical services shall submit a statement for services within forty-five (45) days of the date treatment is initiated and every forty-five (45) days thereafter, as long as services are rendered. Failure to submit statements for services within forty-five (45) days, without reasonable grounds therefor, shall result in a finding that the bills are not compensable.

Section 7. Written Denial of Statement for Services Prior to Resolution of Claim. Prior to resolution of a workers' compensation claim by opinion or order of an administrative law judge, the medical payment obligor shall notify the medical provider and employee of its denial of a specific statement for services, or payment for all future services from the same provider, in writing within forty-five (45) days following receipt of a completed statement for services. Copies of the written denial shall be mailed to the employee, employer, and medical service provider(s). The written denial shall include a statement of the reasons for denial and a brief synopsis of available utilization review or medical bill audit procedures with relevant telephone contact numbers. The written denial should be made only for good faith reasons. Upon receipt of a written denial from a medical payment

obligor, a medical provider may tender a statement for services to other potential payment sources or to the patient.

Section 8. Payment or Challenge to Statement for Services Following Resolution of Claim. (1) Following resolution of a claim by an opinion or order of an administrative law judge, including an order approving settlement of a disputed claim, the medical payment obligor shall tender payment or file a medical fee dispute with appropriate motion to reopen the claim, within thirty (30) days following receipt of a completed statement for services as defined in Section 1(6) of this administrative regulation.

(2) The thirty (30) day period provided in KRS 342.020(1) shall be tolled by occurrence of any of the following:

(a) During any period in which the medical provider has submitted an incomplete statement for services, including a statement which lacks relevant treatment notes or a hospital admission and discharge summary. The payment obligor shall promptly notify the medical provider of any deficient statement and shall request specific documentation. The medical payment obligor shall tender payment or file a medical fee dispute within thirty (30) days following receipt of the required documentation; or

(b) During such period as a medical provider fails to respond to a reasonable information request from the employer or its medical payment obligor pursuant to KRS 324.020(4); or

(c) During such period as the employee's designated physician fails to provide a treatment plan when required by this administrative regulation; or

(d) During the pendency of the utilization review required by 803 KAR 25:190. The thirty (30) day period for filing a medical fee dispute shall commence on the date of rendition of the final decision from the utilization review or medical bill audit. Any medical fee dispute filed thereafter shall include a copy of the final utilization review or medical bill audit decision and all supporting medical opinions.

(3) No obligation for payment or challenge arises when a statement for services clearly indicates that the services were not performed for a work-related condition.

Section 9. Payment Pursuant to Fee Schedules. If the statement for services contains charges in excess of those provided in an applicable fee schedule adopted by the commissioner, the medical payment obligor shall make payment in the scheduled amount and shall serve a [the] written notice of denial [provided in 803 KAR 25:190] setting forth the reason for refusal to pay a greater amount. Following receipt of a final medical bill audit reconsideration decision pursuant to 803 KAR 25:190, the medical provider may dispute the amount of payment within thirty (30) days by filing a medical fee dispute in accordance with 803 KAR 25:012.

Section 10. Patient Billing. (1) Nothing in this section shall prevent a medical provider from tendering a statement for services to a patient once it has received a written denial from the medical payment obligor or has received an opinion by an administrative law judge finding that the services were unrelated to any work injury or occupational disease.

(2) The medical provider shall not bill a patient for services which have been found to be unreasonable or unnecessary by an administrative law judge, if the medical provider has been joined as a party to a workers' compensation claim or to a medical fee dispute and has had an opportunity to present any contrary evidence.

Section 11. Request for Payment for Services Provided or Expenses Incurred to Secure Medical Treatment. (1) When an individual who is not a physician or medical provider provides compensable services for the cure or relief of a work injury or occupational disease, including home nursing services, that individual shall submit a fully completed Form 114 to the employer or medical payment obligor within sixty (60) days of the date the service is

initiated and every sixty (60) days thereafter, if appropriate, for so long as the services are rendered.

(2) Expenses incurred by an employee for access to compensable medical treatment for a work injury or occupational disease, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items shall also be submitted to the employer or its medical payment obligor within sixty (60) days of incurring of the expense. All requests for payments shall be made upon a Form 114.

(3) Failure to timely submit the Form 114, without reasonable grounds, may result in a finding that the expenses are not compensable.

Section 12. Forms. (1) Title and edition. Form 113, "Notice of Designated Physician", August 15, 1996 edition and Form 114 "Request for Payment for Services or Reimbursement for Compensable Expenses", August 15, 1996 edition are hereby incorporated by reference in this administrative regulation.

(2) Public notice.

(a) Forms are available and can be inspected and copied at main and branch offices of the Department of Workers Claims.

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

4. Pikeville - 101 Summit Drive, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m. local time, Monday through Friday, inclusive for this purpose.

[KRS 342.260 requires the Workers' Compensation Board to prepare such administrative regulations as it considers necessary to carry on its work and the work of the administrative law judges under KRS Chapter 342. KRS 342.735 requires the board to establish administrative regulations to expedite the payment of temporary total disability and medical expense benefits. The function of 803 KAR 25:006 is to regulate the selection of physicians and provide for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Long term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond three (3) months;

(b) Medical treatment that in fact continues for a period of more than three (3) months;

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days;

(2) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, pediatricians, and osteopathic and chiropractic practitioners acting within the scope of their license;

(3) "Designated physician" means the physician selected by the employee for treatment under KRS 342.020;

(4) "Treatment plan" means a written plan which may consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results;

(5) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to serious physical or mental disability or death, or medical services that are immediately necessary to alleviate severe pain.

Section 2. Kentucky Workers' Compensation Physician Designation and Medical Release Card. (1) As soon as practicable after receiving notice of the occurrence of a work-related injury or occupational disease for which the employee has sought or intends to seek medical treatment, the employer or employer's medical payment obligor shall mail to the worker the Kentucky Workers' Compensation Physician Designation and Medical Release Card in the format of Form 113 or similar format approved by the Department of Workers' Claims.

Section 3. Employee Selection of Physician. (1) Except for emergency care, all treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the employer, as soon as practicable, of the selection of a "designated physician". The designated physician may refer the employee to such additional physicians or medical service providers as are reasonably necessary for treatment or evaluation.

(2) A physician accepting the employee's selection of him as "designated physician" shall forward a completed copy of the Kentucky Workers' Compensation Physician Designation and Medical Release Card to the representative of the medical payment obligor.

(3) Following his initial selection of a designated physician, the employee may change designated physicians not more than one (1) time without authorization by the employer or its medical payment obligor. Thereafter, the employee may not, except as may be required by medical emergency, make additional selections of physicians without the employer's or medical payment obligor's or an administrative law judge's written consent. Such consent shall not be unreasonably withheld.

(4) This administrative regulation does not prohibit the direct utilization of licensed medical professionals acting within the scope of their authority.

Section 4. Necessity for Treatment Plan. (1) When as a result of a work-related injury or disease an employee has been placed under long-term medical care, the designated physician shall prepare a treatment plan. A treatment plan may be amended, supplemented or changed as conditions warrant.

(2) If the employee has received treatment with passive modalities, which may include electronic stimulation, heat/cold, massage, ultrasound, diathermy, whirlpool or similar modes over a period exceeding sixty (60) days, a treatment plan shall be prepared which details the need for such treatment; the benefits, if any, derived from such treatment; the risks attendant with termination of such treatment; and the time frame in which such treatment is proposed to continue.

(3) A treatment plan shall be prepared and furnished to the employer or its payment obligor seven (7) days in advance of an elective surgical procedure or placement of the employee in a resident work hardening, pain management or medical rehabilitation program. The treatment plan shall set forth specific and measurable performance goals for the employee through any surgery, work hardening, or medical rehabilitation program.

(4) Except as provided in subsection (3) of this section, whenever a treatment plan is required to be prepared, amended, supplemented or changed pursuant to this administrative regulation, it shall be served by mail upon the employer or its medical payment obligor within fifteen (15) days of request.

(5) Preparation of a treatment plan as required by these administrative regulations is a necessary part of the care to be rendered to the patient and is an integral part of the fee authorized in a medical fee schedule for the underlying services. No additional fee shall be charged for the preparation of a treatment plan or progress reports, except a reasonable amount for the photocopying and mailing of such records.

Section 5. Experimental or Questioned Procedures. (1) When the

employee has chosen a medical doctor as his designated physician, charges for treatment, diagnostic modalities, or methods which have been determined by the American Medical Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(2) When the employee has chosen a chiropractor as his designated physician or the designated physician has referred the employee to a chiropractor, charges for treatment, diagnostic modalities, or methods which have been determined by the American Chiropractic Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed noncompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(3) After a Kentucky Workers' Compensation Physician Designation and Medical Release Card has been issued to the employee, the employee shall present the card to medical providers each time medical services are sought in connection with the work-related injury or occupational disease. The card will serve as authorization by the employee to the medical provider to release information as required by KRS 342.020(4).

(4) If the employee elects to change his designated physician, this shall be noted upon the Kentucky Worker's Compensation Physician Designation and Medical Release Card, and the physician accepting the new designation shall promptly forward a copy of the card reflecting the change to the medical payment obligor.

(5) The medical payment obligor shall have available, during regular business hours, an agent who will answer telephone inquiries from medical providers or the employee concerning the claim.

Section 6. Forms. (1) Form 113 is hereby adopted and incorporated in this administrative regulation by reference.

(2) Information available:

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort—Perimeter Park West—Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville—Fourth Floor—The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington—950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah—220B North 8th Street, Paducah, Kentucky 42001; and

5. Pikeville—The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501.]

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 9, 1996 at noon

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: This regulation will affect workers' compensation patients and their medical services providers when injuries/diseases cause the patients to be off work for more than 60 days, or the treatment will last for more than 3 months, or when elective surgery is requested. The exact number of cases affected cannot be precisely estimated, but is probably greater than the approximately 10,000 claims per year currently being litigated. Workers' compensation patients who wish to change treating physicians more than once will be affected, and this number is probably included in the 10,000 litigated claims per year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received. No public comments were made regarding the cost of living and employment thereof, no significant impact on the cost of living and employment is expected. This regulation is intended to control medical costs for workers' compensation injuries.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments were made regarding the cost of doing business.

1. First year: This regulation is anticipated to result in a minimal increase of costs to physicians, chiropractors and others who are required to prepare treatment plans. Another direct cost is the extra time needed by the practitioner's office staff to type and mail the treatment plans and the additional postage required. Savings should result due to medical providers receiving payment more promptly in some cases. It is anticipated that the requirement of a treatment plan will result in savings to medical payment obligors because it will cause the practitioner to give a detailed explanation of the proposed course of treatment of the workers' injury to the medical payment obligor. This will allow the payment obligor to review, with expert assistance, the proposed plan to ensure the treatment is appropriate. Limitation on the patient's change of treating physician more than once without consent will save the payment obligor the time and expense of reviewing multiple or successive proposals for treatment.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year: Reporting and paperwork requirements: This amendment will increase practitioner's reporting and paperwork requirements slightly. The practitioners should only need to slightly expand their existing office notes to create treatment plans for submission to the medical payment obligors.

2. Continuing costs or savings: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation applies through the Commonwealth of Kentucky. No public comments have been received concerning its economic impact.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative method; reasons why alternatives were rejected: KRS 342.260 requires the Commissioner of the Department of Workers Claims to promulgate such administrative regulations as he considers necessary to carry on the work of the department under KRS Chapter 342. KRS Chapter 342.735 requires the commissioner to establish administrative regulations to expedite the payment of medical expense benefits. The function of 803 KAR 25:096 is to regulate the selection of physicians and provide for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect is anticipated.

(b) State whether a detrimental effect on environmental and public

health would result if not implemented: No effect.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: No conflict known.

(a) Necessity of proposed regulation if in conflict: See above.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not appropriate. This proposed regulation applies equally to all employees, medical providers, and employers in the Commonwealth of Kentucky.

LABOR CABINET

Department of Workers' Claims (Amended After Hearing)

803 KAR 25:190. Utilization review and medical bill audit.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. The function of this administrative regulation is to insure that all insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(2) "Denial" means a determination by the utilization reviewer that the medical treatment or service under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(3) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(4) [(3)] "Preauthorization" means a review by the utilization review program of the medical necessity and appropriateness of medical services prior to the service being rendered.

(5) [(4)] "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments [determining the availability of payment] for compensable injuries or diseases. Medical services which are rendered or requested for incidents which are noncompensable under KRS Chapter 342 are not subject to utilization review under this administrative regulation.

(6) [(5)] "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each insurance carrier, individual self-insured employer, group self-insurer, or vendor describing the procedures governing utilization review and medical bills audit activities.

(7) [(6)] "Vendor" means a person or entity which is not required

by this administrative regulation to implement a utilization review or medical bill audit program, but which implements a utilization review and medical bill audit program for purposes of offering those services to insurance carriers, individual self-insured employers or group self-insurers.

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that: utilization reviewers are appropriately qualified; treatment rendered to injured workers is medically necessary and appropriate; and necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that: statements and payments for medical goods and services and charges for depositions, reports, and photocopies comply with KRS Chapter 342 and applicable administrative regulations; medical bill auditors are appropriately qualified; and statements for medical services are not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval. (1) All insurance carriers, individual self-insured employers, and group self-insurers shall fully implement and thereafter maintain a utilization review and medical bill audit program.

(2) Each insurance carrier, individual self-insured employer and group self-insurer shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve utilization review and medical bill audit plans which comply with the requirements of this administrative regulation and KRS Chapter 342.

(3) Vendors shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. The utilization review and medical bill audit program described in the written plan shall comply with all the requirements of this administrative regulation. Upon approval, the vendor will receive written notice from the commissioner.

(4) Utilization review may only be performed by a private review agent certified by the Kentucky Human Resources Cabinet pursuant to KRS 211.461 to 211.466. ~~(Prior to obtaining approval by the commissioner for a utilization review plan, each applicant shall be certified by the Kentucky Cabinet for Human Resources as a private review agent pursuant to KRS 211.461 to 211.466.)~~ Medical bill audit plans do not require certification by the Kentucky Cabinet for Human Resources.

(5) Insurance carriers, individual self-insured employers, and group self-insurers which contract with approved vendors for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(6) Plans shall be approved for a period of four (4) years, or until December 31, 2000, whichever is later. At least ninety (90) days prior to December 31, 2000, and every four (4) years thereafter, insurance carriers, individual self-insured employers, group self-insurers and approved vendors shall apply for renewal of the approval. During the term of an approved plan the commissioner must be notified as soon as practicable of any material change in the approved plan or any change in the selection of a vendor.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made.

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which

care quality and related costs are measured.

(3) A description of the criteria by which claims, medical services and medical bills will be selected for review.

(4) A description of the qualifications of internal and consulting personnel who will conduct utilization review and medical bill audit and the manner in which the personnel are involved in the review process.

(5) A description of the process to assure that treatment plans are obtained for review by qualified medical personnel in all instances where treatment plans are required under 803 KAR 25:096.

(6) A description of the process to assure that a physician is designated by each injured employee as required under 803 KAR 25:096.

(7) A description of the process for rendering and promptly notifying medical providers and employees of initial utilization review decisions.

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program.

(9) An assurance that a database is maintained recording the instances of utilization review, medical bill audit, the name of the reviewer, the extent of the review, the conclusions of the reviewer, and the action, if any, taken as the result of the review. Data shall be maintained for a period of no less than two (2) years and is subject to audit by the commissioner, or his agent pursuant to KRS 342.035(5)(b).

(10) An assurance that a toll free line is provided for employees and medical providers to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to interested parties at least five (5) days/week, forty (40) hours/week during normal business hours.

(11) A description of the policies and procedures that will be implemented to protect the confidentiality of patient information.

(12) An assurance that the acute low back pain practice parameter adopted by the commissioner pursuant to 342.035(8)(a) is incorporated in the plan as the standard for evaluating applicable low back claims. Additional medical guidelines which may be adopted by the commissioner pursuant to 342.035(8)(a) shall be incorporated in utilization review plans.

Section 5. Claim Selection Criteria. (1) Unless the claim is denied as noncompensable, claims are subject to utilization review when any of the following occur:

(a) Upon a medical provider's request for preauthorization of any medical treatment or procedure; or

(b) Upon notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan; or

(c) When total medical costs cumulatively exceed \$3000; or

(d) When total lost work days cumulatively exceed thirty (30) days; or

(e) By order of an administrative law judge.

(2) When applicable, utilization review shall ~~must~~ begin no later than fifteen (15) days following the occurrence of any claims selection criteria. The initial utilization review decision must be rendered within thirty (30) days of the initiation of the utilization review process.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020. The thirty (30) day period shall commence on the date of the final utilization review decision.

(5) Each medical bill, regardless of the amount of the bill, shall be audited within seven (7) days of receipt to assure:

(a) Compliance with applicable fee schedules;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096. Medical bill audit does not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020.

~~[(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020. The thirty (30) day period shall commence on the date of the final utilization review decision.]~~

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. Only licensed physicians, registered nurses, licensed practical nurses, medical records technicians or other personnel, who through training and experience are qualified to issue decisions on medical necessity or appropriateness, shall issue initial utilization review approvals.

(2) Only licensed physicians shall issue initial utilization review denials. Only licensed physicians shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold any license required by the jurisdiction in which they are employed.

(3) Personnel conducting medical bill audit, shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 7. Written Notice of Denial. (1) Following initial review, a written notice of denial shall be issued to both the treating physician and the employee in a timely manner, but in no event to exceed thirty (30) days from the initiation of the utilization review process. The notice of denial shall be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL" and shall contain a statement of the medical reasons for denial, the name, state of licensure and medical license number of the reviewer, and an explanation of utilization review reconsideration rights. The reason for denial shall indicate the medical basis for the decision.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration. (1) A reconsideration process shall be provided within the structure of utilization review whereby initial decisions may be appealed. Any aggrieved party may request reconsideration of the utilization review decision. Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A written decision shall be rendered within twenty-one (21) days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION". Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area has not previously reviewed the matter, an aggrieved party may request further review by a board eligible or certified physician in the appropriate specialty or subspecialty. A written decision shall be rendered within ten (10) days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process shall be provided within the structure of medical bill audit whereby initial decisions may be

appealed. Any aggrieved party may request reconsideration of the medical bill audit decision. Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A written decision shall be rendered within seven (7) ~~[twenty-one (21)]~~ days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT - RECONSIDERATION DECISION". A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020.

~~[Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims.~~

~~(2) "Utilization review and medical bill audit plan" means the written plan submitted to the Commissioner of the Department of Workers' Claims by each insurance carrier, individual self-insured employer and group self-insurer describing the procedures governing utilization review and medical bills audit activities.~~

~~(3) "Utilization review" means the system used to manage and assess patient care through case-by-case assessment of the medical necessity and appropriateness of medical care and services for purposes of determining the availability of payment for compensable injuries or diseases. Medical services which are rendered or requested for incidents which are noncompensable under KRS Chapter 342 are not subject to utilization review under this administrative regulation.~~

~~(4) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.~~

~~Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that: utilization reviewers are appropriately qualified; that treatment rendered injured workers is medically necessary and appropriate; and that necessary medical services are not withheld or unreasonably delayed.~~

~~(2) The medical bill audit program shall assure that: statements and payments for medical goods and services and charges for depositions, reports, and photopies comply with KRS Chapter 342 and applicable administrative regulations; medical bill auditors are appropriately qualified; and, statements for medical services are not disputed without reasonable grounds.~~

~~(3) Each insurance carrier, individual self-insured employer, and group self-insurer shall fully implement and thereafter maintain a utilization review and medical bill audit program no later than February 1, 1996.~~

~~Section 3. Utilization Review and Medical Bill Audit Plan Requirements. No later than December 1, 1995 each insurance carrier, individual self-insured employer and group self-insurer shall provide to the commissioner a written plan for the implementation of a utilization review and medical bill audit program. The utilization review and medical bill audit plan shall include:~~

~~(1) A description of the process, policies and procedures whereby decisions shall be made;~~

~~(2) A description of the specific criteria utilized in the decision making process including treatment protocols or standards in any software, database or other resource used in the development of the review processes;~~

~~(3) A description of the criteria by which claims, medical services and medical bills will be selected for review;~~

~~(4) A description of the qualifications of internal and consulting personnel who will conduct the utilization review, demonstrating education, training, and experience pertinent to evaluating the clinical issues and services under review and the manner in which the personnel are involved in the review process. The plan shall demonstrate that only licensed physicians, registered nurses, licensed practical nurses, medical records technicians or other personnel, who~~

~~through training and experience are qualified to issue decisions on medical necessity or appropriateness, shall approve utilization review decisions. Only licensed physicians shall issue utilization review denials and only licensed physicians shall supervise utilization review personnel conducting case review. Personnel making utilization review recommendations and decisions shall hold any license required by the jurisdiction in which they are employed;~~

~~(5) A description of the qualifications of internal and consulting personnel who will conduct medical bill audits, demonstrating education, training and experience pertinent to evaluating medical bills and statements. Personnel conducting medical bill audits shall hold any license required by the jurisdiction in which they are employed;~~

~~(6) A process to assure that treatment plans are obtained for review by qualified medical personnel in all instances where treatment plans are required under 903 KAR 25:006;~~

~~(7) A timetable for implementation of a utilization review and medical bill audit program which shall provide for full implementation no later than February 1, 1996;~~

~~(8) A system for promptly notifying treating physicians and other providers of utilization review denials. Notices of denials shall contain a statement of the reasons for denial, the name, state of licensure and medical license number of the reviewer, and reconsideration rights. Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information;~~

~~(9) A database recording the instances of utilization review, medical bill audit, the name of the reviewer, the extent of the review, the conclusions of the reviewer, and the action, if any, taken as the result of the review. Data shall be maintained for a period of no less than two (2) years and is subject to audit by the commissioner, or his designee pursuant to KRS 342.035(5)(b);~~

~~(10) A provision for the audit of each medical bill, medical report, and deposition fee regardless of the amount of the bill;~~

~~(11) A description of the policies and procedures to assure that the reviewer or a representative of the reviewer shall be reasonably accessible to interested parties at least five (5) days/week, forty (40) hours/week during normal business hours;~~

~~(12) A description of a reconsideration process, within the structure of utilization review and medical bill audit, whereby initial determinations may be appealed. Any medical provider may request reconsideration by the utilization reviewer or medical bill auditor. Reconsideration of the initial utilization review decisions shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A decision shall be rendered within twenty-one (21) days of receipt of a request for reconsideration. If the denial is upheld, upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area has not previously reviewed the matter, the provider may request further review by a board eligible or certified physician in the appropriate specialty or subspecialty; a final decision shall be rendered within ten (10) days of the request for specialty reconsideration. The carrier's obligation to render payment is tolled during the period of reconsideration. The appeal procedure shall provide for timely notice to anyone aggrieved by the initial decision of the right to appeal and shall provide for a written decision upon appeal; and~~

~~(13) A description of the policies and procedures that will be implemented to protect the confidentiality of patient information.]~~

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 9, 1996 at noon

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: This regulation will

affect insurance carriers, individual self-insured employers and self-insured groups. At present there are 260 self-insured employers in Kentucky, 18 self-insured groups representing over 10,000 employers and approximately 400 insurance carriers which write workers' compensation insurance. This regulation will amend an existing regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No impact on the cost of living and employment is anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No significant impact on the cost of doing business is expected.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year: A slight increase in reporting and paperwork requirements may occur initially. However, it should be offset by the medical cost savings this regulation is intended to create.

2. Continuing costs or savings: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs for printing and distributing informational copies of the regulation is not expected to exceed \$200.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the State of Kentucky. No public comments were received concerning economic impact.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative method; reasons why alternatives were rejected: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations as he considers necessary to carry on the work of the department. KRS 342.035(5) requires the commissioner to promulgate regulations governing medical utilization review and medical bill audit by insurance carriers, self-insured employers and group self-insurers. This administrative regulation is deemed to be the most reasonable and efficient in setting forth the requirements necessary for effective utilization review and medical bill audit.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect is anticipated.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No effect.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication:

(a) Necessity of proposed regulation if in conflict: No effect known.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not appropriate. This proposed regulation applies equally to all employers, self-insured employers, group self-insured funds, and insurance carriers in the Commonwealth of Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(Amended After Hearing)

805 KAR 5:070. Minimum requirements for roof support and the roof control plan approval process.

RELATES TO: KRS 351.020, 352.201

STATUTORY AUTHORITY: KRS 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.201 requires each underground coal mine to formulate and follow an approved roof control plan. The minimum standards of roof support which are required by the department as a part of its roof control plan approval process are not currently set out in statute or administrative regulation. This proposed administrative regulation establishes those minimum standards for roof support and the roof control plan approval process.

Section 1. Definitions. The definitions established in KRS 351.010 and 352.010 shall apply to this administrative regulation, in addition to those set out below:

(1) "Roof control plan" means the plan and its revisions which has been adopted by the licensee for support of the mine roof and approved by the commissioner or his authorized representative pursuant to KRS 352.201(1).

(2) "Automated temporary roof support" or "ATRS" means a mechanical device used to temporarily support the roof while roof bolts are being installed.

(3) "Automated temporary roof support system" means the devices and mechanisms - including the ATRS - used, and methods followed by which ATRS is activated and set to support the roof.

(4) "Mining height" means the distance between the bottom of the coal seam and the bottom of permanent mechanical roof support, and specifically does not include or apply to the brushing of top or bottom for construction work and to coal left unmined for purposes of providing additional roof support.

(5) "Pillar recovery" means any reduction in pillar size during retreat mining.

Section 2. Mining Methods. (1) The method of mining shall not expose any person to hazards caused by excessive widths of rooms, crosscuts and entries, or faulty pillar recovery methods. Pillar dimensions shall be compatible with effective control of the roof, face, ribs and coal or rock bursts.

(2) A sightline or other method of directional control shall be used to maintain the projected direction of mining in entries, rooms, crosscuts and pillar splits.

(3) A sidecut shall be started only from an area that is supported in accordance with the roof control plan.

(4) A working face shall not be mined through into an unsupported area of active workings, except when the unsupported area is inaccessible.

(5) Additional roof support shall be installed where:

(a) The width of the opening specified in the roof control plan is exceeded by more than twelve (12) inches; and

(b) The distance over which the excessive width exists is more than five (5) feet.

Section 3. Roof Bolting. The following material is incorporated by reference: American Society for Testing and Materials (ASTM), Designation: F 432-95, "Standard Specification for Roof and Rock

Bolts and Accessories, 1995 Edition." Copies of the material incorporated by reference may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, (610) 832-9500; it is also available for public inspection at the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky, Monday through Friday, from 8 a.m. until 4:30 p.m.

(1) For roof bolts and accessories addressed in ASTM, F 432-95, the licensee shall:

(a) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM; and

(b) Make this certification available to an authorized representative of the commissioner.

(2) Roof bolts and accessories not addressed in the material incorporated by reference may be used, provided that the use of those roof bolts and accessories is approved by the commissioner or his authorized representative based on:

(a) Demonstrations which show that the materials have successfully supported the roof in an area of a coal mine with similar strata, opening dimensions and roof stresses; or

(b) Tests which show the materials to be effective for supporting the roof in an area of the affected mine which has strata, opening dimensions and roof stresses similar to those in the area where the roof bolts are to be used; during the test process, access to the test area shall be limited to persons necessary to conduct the test.

(3) A bearing plate shall be firmly installed with each roof bolt.

(4) Bearing plates used directly against the mine roof shall be at least six (6) inches square or the equivalent, except that where the mine roof is firm and not susceptible to sloughing, bearing plates five (5) inches square or the equivalent may be used.

(5) Bearing plates used with wood or metal materials shall be at least four (4) inches square or the equivalent.

(6) Wooden materials that are used between a bearing plate and the mine roof in areas which will be used for three (3) years or more shall be treated to minimize deterioration.

(7) When washers are used with roof bolts, the washers shall conform to the shape of the roof bolt head and bearing plate.

(8) The diameter of finishing bits shall be within a tolerance of plus or minus 0.030 inch of the manufacturer's recommended hole diameter for the anchor used.

(9) When separate finishing bits are used, they shall be distinguishable from other bits.

Section 4. Tensioned Roof Bolts. (1) Roof bolts that provide support by creating a beam of laminated strata shall be at least thirty (30) inches long. Roof bolts that provide support by suspending the roof from overlying stronger strata shall be long enough to anchor at least twelve (12) inches into the stronger strata.

(2) Test holes, spaced at intervals specified in the roof control plan, shall be drilled to a depth of at least twelve (12) inches above the anchorage horizon of the bolts being used. When a test hole indicates that bolts would not anchor in competent strata, corrective action shall be immediately taken.

(3) The installed torque or tension ranges for roof bolts as specified in the roof control plan shall maintain the integrity of the support system and shall exceed neither the yield point of the roof bolt nor anchorage capacity of the strata.

(4) In each roof bolting cycle, the actual torque or tension of the first tensioned roof bolt installed with each drill head shall be measured immediately after it is installed. Thereafter, for each drill head used, at least one (1) roof bolt out of every four (4) installed shall be measured for actual torque or tension. If the torque or tension of any of the roof bolts measured is not within the range specified in the roof control plan, corrective action shall be taken.

(5) In working places from which coal is produced during any portion of a twenty-four (24) hour period, the actual torque or tension

on at least one (1) out of every ten (10) previously installed, mechanically anchored, tensioned roof bolts shall be measured from the outby corner of the last open crosscut to the face in each advancing section. Corrective action shall be taken if the majority of the bolts measured:

(a) Do not maintain at least seventy (70) percent of the minimum torque or tension specified in the roof control plan, fifty (50) percent if the roof bolt plates bear against wood; or

(b) Have exceeded the maximum specified torque or tension by fifty (50) percent.

(6) The licensee or a person designated by him shall certify by signature and date that measurements required by subsection (5) of this section have been made. This certification shall be maintained for at least one (1) year and shall be made available to an authorized representative of the commissioner and representatives of the miners.

(7) Tensioned roof bolts installed in the roof support pattern shall not be used to anchor trailing cables or used for any other purpose that could affect the tension of the bolt. The hanging of trailing cables, line brattice, telephone lines, or other similar devices which do not place sudden loads on the bolts is permitted.

(8) Angle compensating devices shall be used when tensioned roof bolts are installed at angles greater than five (5) degrees from the perpendicular to the bearing plate.

(9) The first nontensioned grouted roof bolt installed during each roof bolting cycle shall be tested during or immediately after the first row of bolts has been installed. If the bolt tested does not withstand at least 150 foot-pounds of torque without rotating in the hole, corrective action shall be taken.

Section 5. Installation of Roof Support Using Mining Machines with Integral Roof Bolters. When roof bolts are installed by a continuous mining machine with integral roof bolting equipment:

(1) The distance between roof bolts shall not exceed ten (10) feet crosswise;

(2) Roof bolts to be installed nine (9) feet or more apart shall be installed with a wooden crossbar at least three (3) inches thick and eight (8) inches wide, or material which provides equivalent support; and

(3) Roof bolts to be installed more than eight (8) feet but less than nine (9) feet apart shall be installed with a wooden plank at least two (2) inches thick and eight (8) inches wide, or material which provides equivalent support.

Section 6. Conventional Roof Support. (1) When conventional roof support materials are used as the only means of support:

(a) The width of any opening shall not exceed twenty (20) feet;

(b) The spacing of roadway roof support shall not exceed five (5) feet;

(c) Supports shall be installed to within five (5) feet of the uncut face;

(d) When supports nearest the face must be removed to facilitate the operation of face equipment, equivalent temporary support shall be installed prior to removing the supports;

(e) Straight roadways shall not exceed sixteen (16) feet wide where full overhead support is used and fourteen (14) feet wide where only posts are used;

(f) Curved roadways shall not exceed sixteen (16) feet wide; and

(g) The roof at the entrance of all openings along travelways which are no longer needed for storing supplies or for travel of equipment shall be supported by extending the line of support across the opening.

(2) Conventional roof support materials shall meet the following specifications:

(a) The minimum diameter of cross-sectional area of wooden posts be as follows:

| (in inches) | round post (in inches) | area of split post (in square inches) |
|-----------------|---------------------------|--|
| 60 or less | 4 | 13 |
| Over 60 to 84 | 5 | 20 |
| Over 84 to 108 | 6 | 28 |
| Over 108 to 132 | 7 | 39 |
| Over 132 to 156 | 8 | 50 |
| Over 156 to 180 | 9 | 64 |
| Over 180 to 204 | 10 | 79 |
| Over 204 to 228 | 11 | 95 |
| Over 228 | 12 | 113 |

(b) Wooden materials used for support shall have the following dimensions:

1. Cap blocks and footings shall have flat sides and be at least two (2) inches thick, four (4) inches wide and twelve (12) inches long;

2. Crossbars shall have a minimum cross-sectional area of twenty-four (24) square inches and be at least three (3) inches thick;

3. Planks shall be at least six (6) inches wide and one (1) inch thick.

(c) Cribbing materials shall have at least two (2) parallel flat sides.

(3) A cluster of two (2) or more posts that provide equivalent strength may be used to meet the requirements of subsection (2)(a) of this section, except that no post shall have a diameter less than four (4) inches or have a cross-sectional area less than thirteen (13) square inches.

(4) Materials other than wood used for support shall have support strength at least equivalent to wooden material meeting the applicable provisions of this section.

(5) Posts and jacks shall be tightly installed on solid footing.

(6) When posts are installed under roof susceptible to sloughing, a cap block, plank, crossbar or materials that are equally effective shall be placed between the post and the roof.

(7) Blocks used for lagging between the roof and crossbars shall be spaced to distribute the load.

(8) Jacks used for roof support shall be used with at least thirty-six (36) square inches of roof-bearing surface.

Section 7. Pillar Recovery. (1) Full and partial pillar recovery shall not be conducted on the same pillar line, except where physical conditions such as unstable floor or roof, falls of roof, oil and gas well barriers or surface subsidence require that pillars be left in place.

(2) Before mining is begun in a pillar split or lift:

(a) At least two (2) rows of breaker posts or equivalent support shall be installed as close to the initial intended breakline as practicable and across each opening leading into an area where full or partial pillar extraction has been completed; and

(b) A row of roadside-radius (turn) posts or equivalent support shall be installed leading into the split or lift.

(3) Before mining is started on a final stump, at least two (2) rows of posts or equivalent support shall be installed on not more than four (4) foot centers on each side of the roadway; only one (1) open roadway, which shall not exceed sixteen (16) feet wide, shall lead from solid pillars to the final stump of a pillar. Where posts are used as the sole means of roof support, the width of the roadway shall not exceed fourteen (14) feet.

(4) During open-end pillar extraction, at least two (2) rows of breaker posts or equivalent support shall be installed on not more than four (4) foot centers. These supports shall be installed between the lift to be started and the area where pillars have been extracted and shall be maintained to within seven (7) feet of the face, and the width of the roadway shall not exceed sixteen (16) feet. Where posts are used as the sole means of roof support, the width of the roadway shall not exceed fourteen (14) feet.

Post Length Diameter of Cross-sectional

Section 8. Installation and Use of Automated Temporary Roof

Support Systems. This section establishes the requirements for and criteria of automated temporary roof support in underground coal mines in which both the coal bed thickness and the mining height exceed thirty (30) inches.

(1) All roof bolting machines and continuous mining machines with integral roof drills used in a working place in a coal mine shall be provided with an approved automated temporary roof support system unless other methods of temporarily supporting the roof have been approved by the commissioner.

(2) Automated temporary roof support systems and all other methods of temporarily supporting the roof shall be approved on an individual mine basis by the commissioner and shall become part of the roof control plan required by KRS 352.201(1).

(3) The commissioner may grant a waiver of the requirement for the use of an automated temporary roof support system if it has been demonstrated by the licensee and determined during an investigation by an authorized representative of the commissioner that the use of such a system would create a condition which would cause a greater hazard to persons working inby the area where permanent supports have been installed than the method presently being employed or proposed by the licensee for temporarily supporting the roof; or where the technology of an automated temporary roof support system does not exist to allow compliance with the requirements established in subsection (5) of this section. The commissioner may also grant a waiver if the configuration of the surface of the roof or other conditions make the use of an ATRS system ineffective or impractical, or where the geology or condition of the roof is such that the licensee's present roof control plan provides adequate safety to the miner. In granting a waiver as to the use of the automated roof temporary roof support system, the commissioner may approve the use of temporary jacks and posts in lieu of the ATRS.

(4) In the event of a mechanical breakdown in the ATRS system, the licensee shall provide for comparable temporary roof support and immediately notify the commissioner or his authorized representative of the temporary roof support in use and the provisions being made to repair or replace the ATRS. The commissioner or his authorized representative may approve the procedure, subject to reasonable conditions.

(5) All machines using, or used as, an automated temporary roof support system shall comply with the following minimum requirements unless a waiver has been granted or another method of temporarily supporting the roof has been approved by the commissioner, pursuant to subsection (2) of this section:

(a) The necessary controls to position the machine and place the ATRS against the roof shall be operated from under permanently supported roof, unless the design of the system provides adequate protection of the miner while setting such supports;

(b) The ATRS shall be placed firmly against the roof before any work is performed inby permanent roof supports and shall remain against the roof while work is being done, unless the configuration of the surface of the roof is such as to prevent the ATRS from being placed uniformly against that roof;

(c) All hydraulic jacks affecting the support capacity of an ATRS shall have check valves or equivalent protection, to prevent support failure in the event of a sudden loss of hydraulic pressure;

(d) An ATRS used in conjunction with single bolt installation shall elastically support, at a minimum, a deadweight load of 11,250 pounds for each five (5) feet by five (5) feet square area of the roof to be supported;

(e) An ATRS consisting of pads and/or crossbars used in single or multiple rows shall elastically support, at a minimum, a deadweight load in pounds of $450 \times ((L+5) \times (W+5))$, where L is the length of the support structure from tip to tip and W is the width taken at the center line of a support structure to the center line of another support structure;

(f) The actual capacity of the ATRS to support elastically a deadweight load shall be certified by a registered professional

engineer;

(g) The distance that the ATRS may be set inby the last row of permanent supports shall be dependent on the row spacing requirements of the permanent roof supports and shall be authorized in the approved roof control plan; and

(h) No person shall work or travel inby the ATRS.

Section 9. Manual Installation of Temporary Support. (1) When manually installing temporary support, only persons engaged in installing the support shall proceed beyond permanent support.

(2) When manually installing temporary supports, the first temporary support shall be set no more than five (5) feet from a permanent roof support and the rib. All temporary supports shall be set so that the person installing the supports remains between the temporary support being set and two (2) other supports which shall be no more than five (5) feet from the support being installed. Each temporary support shall be completely installed prior to installing the next temporary support.

(3) All temporary supports shall be placed on no more than five (5) foot centers.

(4) Once temporary supports have been installed, work or travel beyond permanent roof support shall be done between temporary supports and the nearest permanent support or between other temporary supports.

Section 10. Warning Devices. Except during the installation of roof supports, the end of permanent roof support shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel beyond permanent support.

Section 11. Roof Testing and Scaling. (1) A visual examination of the roof, face and ribs shall be made immediately before any work is started in an area and thereafter as conditions warrant.

(2) Where the mining height permits and the visual examination does not disclose a hazardous condition, sound and vibration roof tests, or other equivalent tests, shall be made where supports are to be installed. When sound and vibration tests are made, they shall be conducted:

(a) After the automated temporary roof support system is set against the roof and before other support is installed; or

(b) Prior to manually installing a roof support.

(3) Sound and vibration roof tests, or other equivalent tests, shall begin under supported roof and progress no further than the location where the next support is to be installed.

(4) When a hazardous roof, face, or rib condition is detected, the condition shall be corrected before there is any other work or travel in the affected area. If the affected area is left unattended, each entrance to the area shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel into the area. A bar for taking down loose material shall be available in the working place or on all face equipment, except haulage equipment. Bars provided for taking down loose material shall be of a length and design that will allow the removal of loose material from a position that will not expose the person performing this work to injury from falling material.

Section 12. Rehabilitation of Areas with Unsupported Roof. (1) General rehabilitation plans shall be submitted with the roof control plan.

(2) Before rehabilitating each area where a roof fall has occurred or the roof has been removed by mining machines or by blasting:

(a) The licensee shall establish the clean-up and support procedures to be followed;

(b) All persons assigned to perform rehabilitation work shall be instructed in the clean-up and support procedures; and

(c) Ineffective, damaged or missing roof support at the edge of the area to be rehabilitated shall be replaced or other equivalent

support installed.

(3) [(2)] All persons who perform rehabilitation work shall be experienced in this work or they shall be supervised by a person experienced in rehabilitation work who is designated by the licensee.

(4) [(3)] Where work is not being performed to rehabilitate an area in active workings where a roof fall has occurred or the roof has been removed by mining machines or by blasting, each entrance to the area shall be supported by at least one (1) row of posts on not more than five (5) foot centers, or equally effective support.

Section 13. Supplemental Support Materials, Equipment and Tools. (1) A supply of supplemental roof support materials and the tools and equipment necessary to install the materials shall be available at a readily accessible location on each working section or within four (4) crosscuts of each working section.

(2) The quantity of support materials, tools, and equipment made available in accordance with this section shall be sufficient to support the roof if adverse roof conditions are encountered, or in the event of a roof fall.

Section 14. Longwall Mining Systems. For each longwall mining section, the roof control plan shall specify:

(1) The methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall; and

(2) The procedures that shall be followed if a ground failure prevents travel out of the section through the tailgate side of the longwall.

Section 15. Roof Control Plan. (1) When revisions are proposed to the roof control plan required by KRS 352.201, only the revised pages shall be submitted unless otherwise specified by the commissioner or his authorized representative.

(2) The licensee shall be notified in writing of the approval or denial of a proposed roof control plan or proposed revision.

(3) When approval of a proposed plan or revision is denied, the deficiencies of the plan or revision and recommended changes shall be specified and the licensee shall be afforded an opportunity to discuss the deficiencies and changes with the commissioner or his authorized representative.

(4) Before new support materials, devices or systems other than roof bolts and accessories are used as the only means of roof support, the commissioner or his authorized representative may require that the effectiveness of those new support materials, devices, or systems be demonstrated by experimental installations.

(5) No proposed roof control plan or revision to a roof control plan shall be implemented before it is approved.

(6) Before implementing an approved revision to a roof control plan, all persons who are affected by the revision shall be instructed in its provisions.

(7) The approved roof control plan and any revisions shall be available to the miners and representative of miners at the mine.

Section 16. Roof Control Plan Information. The following information shall be included in each roof control plan:

(1) The name and address of the licensee;

(2) The name, address, mine identification number and location of the mine;

(3) The name and title of the company official responsible for the plan;

(4) A typical columnar section of the mine strata which shall:

(a) Show the name and the thickness of the coalbed to be mined and any persistent partings;

(b) Identify the type and show the thickness of each stratum up to and including the main roof above the coalbed and for distance of at least ten (10) feet below the coalbed; and

(c) Indicate the maximum cover over the area to be mined.

(5) A description and drawings of the sequence of installation and

spacing of supports for each method of mining used;

(6) When an automated temporary roof support system is used, the maximum distance that an automated temporary roof support system is to be set beyond the last row of permanent support;

(7) When tunnel liners or arches are to be used for roof support, specifications and installation procedures for the liners or arches;

(8) Drawings indicating the planned width of openings, size of pillars, method of pillar recovery, and the sequence of mining pillars;

(9) A list of all support materials required to be used in the roof, face and rib control system, including, if roof bolts are to be installed:

(a) The length, diameter, grade and type of anchorage unit to be used;

(b) The drill hole size to be used; and

(c) The installed torque or tension range for tensioned roof bolts.

(10) When mechanically anchored tensioned roof bolts are used, the intervals at which test holes shall be drilled;

(11) A description of the method of protecting persons:

(a) From falling material at drift openings; and

(b) When mining approaches within 150 feet of an outcrop.

(12) Each drawing submitted with a roof control plan shall contain a legend explaining all symbols used and shall specify the scale of the drawing, which shall not be less than five (5) feet to the inch or more than twenty (20) feet to the inch;

(13) All roof control plan information, including drawings, shall be submitted on eight and one half (8.5) by eleven (11) inch paper, or paper folded to this size; and

(14) Any other information required by the commissioner.

Section 17. Roof Control Plan Approval Criteria. This section sets forth the criteria that shall be considered on a mine-by-mine basis in the formulation and approval of roof control plans and revisions.

(1) Roof bolts shall be installed on centers not exceeding five (5) feet lengthwise and crosswise, except as approved by the commissioner or his authorized representative.

(2) When tensioned roof bolts are used as a means of roof support, the torque or tension range shall be capable of supporting roof bolt loads of at least fifty (50) percent of either the yield point of the bolt or anchorage capacity of the strata, whichever is less.

(3) Any opening that is more than twenty (20) feet wide shall be supported by a combination of roof bolts and conventional supports.

(4) In any opening more than twenty (20) feet wide:

(a) Posts shall be installed to limit each roadway to sixteen (16) feet wide, where straight, and eighteen (18) feet wide, where curved; and

(b) A row of posts shall be set for each five (5) feet of space between the roadway posts and the ribs.

(5) Openings shall not be more than thirty (30) feet wide.

(6) If installing roof support using mining machines with integral roof bolters:

(a) Before an intersection or pillar split is started, roof bolts shall be installed on at least five (5) foot centers where the work is performed;

(b) Where the roof is supported by only two (2) roof bolts crosswise, openings shall not be more than sixteen (16) feet wide.

(7) Pillar recovery.

(a) During development, any dimension of a pillar shall be at least twenty (20) feet;

(b) Pillar splits and lifts shall not be more than twenty (20) feet wide;

(c) Breaker posts shall be installed on not more than four (4) foot centers;

(d) Roadside-radius (turn) posts, or equivalent support, shall be installed on not more than four (4) foot centers leading into each pillar split or lift;

(e) Before full pillar recovery is started in areas where roof bolts are used as the only means of roof support and openings are more than sixteen (16) feet wide, at least one (1) row of posts shall be in-

stalled to limit the roadway width to sixteen (16) feet. These posts shall be:

1. Extended from the entrance to the split through the intersection outby the pillar in which the split or lift is being made; and
2. Spaced on not more than five (5) foot centers.

(8) Openings that create an intersection shall be permanently supported or at least one row of temporary supports shall be installed on not more than five (5) foot centers across the opening before any other work or travel is permitted in the intersection.

(9) In working sections where the mining height is below thirty (30) inches, an automated temporary roof support system shall be used to the extent practicable during the installation of roof bolts with roof bolting machines and continuous-mining machines with integral roof bolters.

(10) In mines with longwall mining systems:

(a) Systematic supplemental support shall be installed throughout:

1. The tailgate entry of the first longwall panel prior to any mining; and

2. In the proposed tailgate entry of each subsequent panel in advance of the frontal abutment stresses of the panel being mined.

(b) When a ground failure prevents travel out of the section through the tailgate side of the longwall section, the roof control plan shall address:

1. Notification of miners that the travelway is blocked;
2. Reinstruction of miners regarding escapeways and escape procedures in the event of an emergency;
3. Reinstruction of miners on the availability and use of self-contained self-rescue devices;
4. Monitoring and evaluation of the air entering the longwall section;
5. Location and effectiveness of the two (2) way communication systems; and
6. A means of transportation from the section to the main line.

(c) The plan provisions addressed by paragraph (b) of this subsection shall remain in effect until a travelway is reestablished on the tailgate side of a longwall section.

(11) Additional measures in plans may be required by the commissioner or his authorized representative. Roof control plans that do not conform to the applicable criteria set out in this section may be approved by the commissioner or his authorized representative, if those plans provide effective control of the roof, face, and ribs.

Section 18. Evaluation and Revision of Roof Control Plan. (1) Revisions of the roof control plan shall be proposed by the licensee:

- (a) When conditions indicate that the plan is not suitable for controlling the roof, face, ribs, or coal or rock bursts; or
- (b) When accident and injury experience at the mine indicates the plan is inadequate; the accident and injury experience at each mine shall be reviewed at least every six (6) months.

(2) Each unplanned roof fall, rib fall, and coal or rock burst that occurs in the active workings shall be plotted on a mine map if it:

- (a) Is above the anchorage zone where roof bolts are used;
 - (b) Impairs ventilation;
 - (c) Impedes passage of persons;
 - (d) Causes miners to be withdrawn from the area affected; or
 - (e) Disrupts regular mining activities for more than one (1) hour.
- (3) The mine map on which roof falls are plotted shall be available at the mine site for inspection by authorized representatives of the commissioner and representatives of miners at the mine.

(4) The roof control plan for each mine shall be reviewed every six (6) months by an authorized representative of the commissioner. This review shall take into consideration any falls of the roof, face and ribs and the adequacy of the support systems used at the time.

Section 19. Upon the effective date of this administrative regulation, 805 KAR 5:020 shall be repealed.

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner, Chairman

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

CONTACT PERSON: Eugene D. Attkisson, Legal Counsel, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, Phone: (606) 246-2026, Fax: (606) 246-2038.

REGULATORY IMPACT ANALYSIS

Contact Person: Eugene D. Attkisson

(1) Type and number of entities affected: This proposed administrative regulation will apply to the all of the underground coal mines in the Commonwealth licensed by this agency. There were 484 underground coal mine licenses issued in 1995; this number is projected to remain relatively constant for 1996.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Although no comments were received following the publication of the Notice of Intent to Promulgate an Administrative Regulation, this agency anticipates no direct or indirect costs or savings on the cost of living and employment in the Commonwealth as a result of implementing this proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Establishing minimum requirements for roof support and clarifying the roof control plan approval process will save each underground coal mine time in developing its plan, which could result in a cost savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Establishing and clarifying the roof support requirements by administrative regulation will minimize the quantity of information an underground coal mine operator must currently address in the roof control plan. Also, the proposed administrative regulation requires that roof control plans be reviewed every six (6) months, and when revisions to a roof control plan are proposed, only the revised pages need to be submitted unless otherwise specified by the commissioner or his authorized representative. Clarifying the compliance requirements and reducing the reporting and paperwork requirements could result in a cost savings to the underground coal operators in the Commonwealth.

2. Second and subsequent years: The cost savings benefits realized in the first year will continue.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The continuity and efficiency of the department's roof control plan approval process will be improved, resulting in greater productivity of the roof control specialist staff.

2. Continuing costs or savings: The cost savings benefits realized in the first year will continue.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Setting out the minimum requirements for roof support in the proposed administrative regulation will minimize the quantity of information an underground coal mine must address in its roof control plan. This change will allow the department to better utilize the time and expertise of its roof control specialists by focusing on the prevailing geological conditions and the mining system to be used at the specific mine, rather than reviewing often repetitive roof control plans. Also, the proposed administrative regulation requires that roof control plans be reviewed every six (6) months, and when revisions to a roof control plan are proposed, only the revised pages need to be submitted unless

otherwise specified by the commissioner or his authorized representative.

(4) Assessment of anticipated effect on state and local revenues: The proposed administrative regulation has no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department's roof control plan approval process will continue to be the responsibility of the current staff of roof control specialists, whose positions are funded with General Fund dollars. Implementing and enforcing the proposed administrative regulation will require no additional funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky: No comments were received following the publication of the Notice of Intent to Promulgate an Administrative Regulation; however, the proposed administrative regulation will have no economic impact on the Commonwealth of Kentucky.

(7) Assessment of alternative methods; reason why alternatives were rejected: The alternative to the enactment of this proposed administrative regulation would be to continue to enforce the minimum standards of roof support which are currently required by the department as part of its roof control plan approval process, but which are not set out in current statute or administrative regulation. This administrative regulation is proposed in order to establish the minimum requirements for roof support and the department's roof control plan approval process and make it readily available to the coal mining industry.

(8) Assessment of expected benefits: The proposed administrative regulation will enhance voluntary compliance by clarifying the minimum standards of roof support which are required by the department as a part of its roof control plan approval process. Increased compliance with the roof support requirements will ultimately enhance the safety of underground coal miners.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Ensuring a safer working environment for underground coal miners will decrease the potential for serious and fatal roof-related mining accidents.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There is a potential detrimental effect on the safety of underground coal miners if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: The potential for serious and fatal roof-related mining accidents is increased if the proposed administrative regulation is not implemented.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no identified statute, administrative regulation or government policy which is in conflict with, overlaps, or duplicates the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: The proposed administrative regulation is not in conflict.

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

(10) Any additional information or comments: Representatives of the underground coal mining industry have expressed support for this proposed administrative regulation; however, no comments were received following the publication of the Notice of Intent to Promulgate an Administrative Regulation.

(11) TIERING: Is tiering applied? Yes. This proposed administrative regulation establishes the minimum standards for roof support and the roof control plan approval process. Tiering is applied because each underground coal mine is required to formulate and follow an

approved roof control plan which is suitable to the prevailing geological conditions and the mining system to be used at the specific mine.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Epidemiology
(Amended After Hearing)

902 KAR 2:090. Tuberculosis detection, prevention, and control [testing].

RELATES TO: KRS 158.037, 211.180, 214.034, 215.520, 1996 Ky. Acts ch. 33

STATUTORY AUTHORITY: KRS 194.050, 211.090, 215.520, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.180 mandates the Cabinet for Health Services [~~Human Resources~~] to implement a statewide program for the detection, prevention, and control of communicable diseases. KRS 214.034 requires the establishment of tuberculosis testing schedules for children by the Cabinet for Health Services [~~Human Resources~~]. KRS 215.520 requires the cabinet to promulgate administrative regulations to carry out the provisions of 1996 Ky. Acts ch. 33. This administrative regulation describes the procedure for drug susceptibility testing of antituberculosis drugs, the procedure by which timely hospitalization for persons with active tuberculosis shall be obtained, and measures to be taken to prevent spread of tuberculosis. KRS 158.037 requires the establishment of administrative [~~reporting~~] regulations for reporting tuberculin skin test results in children attending all public or private elementary or secondary schools by the Cabinet for Health Services [~~Human Resources~~]. This administrative regulation mandates tuberculin testing for all first time school enrollees in private and public schools in Kentucky and describes the methods for reporting tuberculin skin test results on children to local health departments.

Section 1. Definitions. (1) "Child" means an individual under the age of eighteen (18) years.

(2) "Tuberculin skin test" means the intradermal [~~intracutaneous~~] injection of five (5) tuberculin units of Purified Protein Derivative (PPD) by the Mantoux technique [~~for multiple puncture, but preferably the former~~].

(3) "First-time enrollee" means a child entering private or public school (primary school, entry level through 12th grades) in the Commonwealth, the child never having attended school in the Commonwealth previously.

(4) The definition of "active tuberculosis" is governed by KRS 215.511.

(5) The definition of "isolates" is governed by KRS 215.511.

(6) "Exception patient" means a patient with tuberculosis identified by the local health department as being in exceptional or infrequent circumstances. Exceptional or infrequent circumstances are those which require:

(a) Short-term hospitalization for invasive diagnostic procedures, respiratory isolation, management of drug-resistant disease, other rare clinical circumstances which, in the judgement of a physician of the Cabinet for Health Services require hospitalization; or

(b) Security measures to counter recalcitrant behavior.

Section 2. (1) A reaction to a tuberculin skin test shall be interpreted using the criteria currently recommended by the American Thoracic Society and the Centers for Disease Control and Prevention.

(2) When the skin test of any child indicates that treatment is needed, the child shall be treated in accordance with the recommendations of the American Thoracic Society and the Centers for Disease Control and Prevention.

Section 3. A first-time enrollee in public or private school in the Commonwealth shall be tested for tuberculosis by tuberculin skin test within eighteen (18) months prior to entering the public or private school. A child who has not been tested prior to entering the public or private schools may be permitted to attend class for a period of time not to exceed thirty (30) days, as approved in writing by the director [health officer] of the local health department having jurisdiction. Further attendance shall be conditioned upon presentation of proof of having been tested for tuberculosis in accordance with Section 3 of this administrative regulation.

Section 4. [3-] (1) A first-time enrollee in a public or private school shall present a valid certificate approved by the Cabinet for Health Services [Human Resources] and signed by the attending physician, advanced registered nurse practitioner, or by the director [health officer] of the local health department having jurisdiction or his designee, containing the date of the most recent tuberculin skin test [the type of skin test given (Mantoux, multiple puncture or other)], and the millimeters of induration at forty-eight (48) to seventy-two (72) hours posttesting. The test shall have been read by a licensed or certified health professional. The certificate shall become a permanent part of the child's school health record.

(2) If tuberculin skin testing is medically contraindicated according to the written statement of a [n attending] physician [or of the health officer of the local health department having jurisdiction], the child shall receive a chest x-ray. The only exception to this requirement is a child who can present documentation of a completed course of the currently recommended American Thoracic Society and the Centers for Disease Control and Prevention [isoniazid] prophylaxis or multiple drug treatment for previously diagnosed tuberculosis infection or disease.

Section 5. [4-] A public or private school shall, within sixty (60) days of the beginning of each school year, forward to the local health department having jurisdiction in the area a report containing:

(1) [The type of skin test and] (4) The millimeters of induration for all first-time enrollees who had any induration at forty-eight (48) to seventy-two (72) hours indicated on their tuberculin skin testing certificate and all first-time enrollees who were excepted in accordance with Section 3(2) of this administrative regulation; and [A list showing:]

(a) The child's name;

(b) Grade; and

[(c) Type of tuberculin skin test performed; and]

(2) The number of first-time enrollees by school grade; and of those, the number tested.

Section 6. [5-] If the prevalence of significant tuberculin reactors among first-time enrollees at a [ny] school exceeds or equals five-tenths (0.5) of one (1) percent, additional testing may be required by the director [health officer] of the local health department having jurisdiction or the Cabinet for Health Services [Human Resources]. Results of the testing shall be provided the local health department having jurisdiction. Additional control measures may then be required at the [sound] discretion of the director [health officer] of the local health department having jurisdiction or the Cabinet for Health Services [Human Resources] in order to protect the public health.

Section 7. Drug susceptibility testing to determine the efficacy of prescribed drug therapy for all persons with active tuberculosis shall be performed as follows:

(1) Drug susceptibility testing of initial isolates from clinical specimens obtained from any patient with active tuberculosis shall be

performed by a licensed clinical laboratory or the state public health laboratory.

(2) Repeat drug susceptibility testing of a specimen ordered by a physician from a patient who, after three (3) months of treatment, continues to produce specimens which are culture positive for tuberculosis shall be performed by a licensed clinical laboratory or the state public health laboratory on the latest isolate obtained from the patient by the physician.

Section 8. The exception patient shall be assured of timely hospitalization so that no delay shall occur in diagnosis, treatment, or respiratory isolation, when required. The hospitalization shall be facilitated through a local health department director's designee. Private practitioners may refer an exception patient to the local health department in the county in which the exception patient resides.

Section 9. (1) An exception patient who is hospitalized shall be interviewed by the local health department director's designee within seventy-two (72) hours to determine existing health care insurance coverage (third-party insurer, Medicaid).

(2) The local health department director's designee shall ensure that a hospitalized exception patient without health coverage is evaluated for Medicaid eligibility by the Cabinet for Families and Children and shall assist the exception patient and the Cabinet for Families and Children in efforts to obtain health coverage.

(3) Reimbursement for tuberculosis inpatient services for an exception patient who is determined to be ineligible for health care insurance coverage shall be made to the provider by the Cabinet for Health Services through the local health department at the Medicaid per diem rate or other rate as approved in advance by the Cabinet for Health Services. Reimbursement for tuberculosis inpatient services for an exception patient shall be contingent on the amount of funds accessible to the Tuberculosis Control Program of the Department for Public Health.

(4) Time-limited payment for the hospitalized exception patient shall be made through a contract or memorandum of understanding between the local health department and the admitting facility.

(a) The local health department shall consult with the Cabinet for Health Services, Tuberculosis Control Program, prior to admission of an exception patient in order to access Cabinet for Health Services funds.

(b) If an emergency or nonbusiness day admission of an exception patient is required, this consultation shall occur within seventy-two (72) hours.

Section 10. (1) A security measure which prevents continued transmission of tuberculosis by the exception patient shall be applied incrementally, progressing from remaining at home which is the least restrictive measure, to a more restrictive measure which may be admission to a suitable halfway house, hospital-based respiratory isolation, with guard if necessary, or an adequately ventilated correctional unit.

(2) The local health department director's designee shall arrange adequate security measures to prevent continued transmission of tuberculosis in a setting commensurate with the degree of risk posed by the exception patient.

(3) Time-limited payment for security of an exception patient who is hospitalized or who enters a receiving facility, such as a halfway house or correctional unit, shall be made through a contract or memorandum of understanding between the local health department and the receiving facility.

(a) The local health department shall consult with the Cabinet for Health Services prior to acquisition of security services or placement in a receiving facility in order to access Cabinet for Health Services funds.

(b) If an emergency or nonbusiness day admission or placement is required, this consultation shall occur within seventy two (72) hours.

Section 11. The following material is incorporated by reference in this administrative regulation:

(1) The Joint Statement of the American Thoracic Society and the Centers for Disease Control and Prevention, "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children, 1994", adopted March 1993, and published by the American Lung Association.

(2) Material incorporated by reference may be reviewed or obtained at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky, 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: October 7, 1996

FILED WITH LRC: October 8, 1996 at 11 a.m.

CONTACT PERSON: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky, 40621, (502) 564-7900, Fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Reginald Finger, MD/Joyce Bothe

(1) Type and number of entities affected: This administrative regulation affects all physicians who treat persons with active tuberculosis and all local health departments which have the responsibility for prevention and control of tuberculosis. It requires health professionals to use the Mantoux method for administering TB skin tests.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No impact on the cost of living and employment was identified in the public hearing.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No impact on the cost of doing business was identified in the public hearing.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Physicians will be required to order drug susceptibility testing and to use the Mantoux method for skin testing.

2. Second and subsequent years: See (c)1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: There will be no increase in direct or indirect cost to the promulgating body. The savings will be seen in the effect of preventing the spread of tuberculosis among the population.

2. Continuing cost or savings: See (a)1.

3. Additional factors increasing or decreasing costs: See (a)1.

(b) Reporting and paperwork requirements: No increase to the cabinet.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues. However, it will clarify the responsibility of local health department's ability to prevent the spread of tuberculosis which will save health dollars.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and General Fund dollars remain available for the prevention and control of tuberculosis.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact was identified as a result of the

public hearing.

(b) Kentucky: See (6)a.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 215 requires the cabinet to establish tuberculosis control measures by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The prevention of new cases of tuberculosis and the spread of tuberculosis by persons who already have active disease will have a major impact on the public health of persons in all geographic areas of the Commonwealth. The requirement to use the Mantoux method for testing for tuberculosis brings Kentucky into compliance with recommendations of the American Thoracic Society, the American Academy of Pediatrics, and the CDC.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See (8)a.

(c) If detrimental effect would result, explain detrimental effect: See (8)a.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No conflict is known.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because all entities are regulated in the same manner.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 15, 1996

PERSONNEL BOARD
(Amendment)

101 KAR 1:365. Appeal and hearing procedures.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings.

Section 1. General Provisions. (1)(a) Appeals shall be filed with the Personnel Board through the office of the executive director.

(b) Appeals, motions, exceptions, responses, witness lists, or other documents may be filed by a party with the board by means of facsimile transmission. An attempt shall be made by the party to transmit such documents to all parties in like manner.

(c) To be timely filed, a document transmitted by facsimile must be received by the board within the statutory or regulatory times specified for filing and must be received by the board no later than midnight on the last day for filing.

(d) The original of all facsimile transmissions shall be received by the Personnel Board no later than three (3) business days after transmission or the document transmitted may be voided.

(e) Failure of the board's facsimile equipment to receive a document shall be at the risk of the sender, in which case receipt of the original by the board shall prevail.

(f) Nothing in this section shall be construed to permit the use of state time, equipment, materials, or personnel by state employees in pursuing an appeal.

~~(2)(a) All appeals shall be heard in Frankfort, Kentucky.~~

~~(b) An appeal shall be filed on "Kentucky Personnel Board Appeal Form".~~

~~(3) If the appeal form has been signed by an attorney indicating that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders regarding the appeal shall be transmitted to that attorney and all filings and motions on behalf of the appealing employee shall be submitted by that attorney.~~

~~(4) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to each appeal. If more than one (1) hearing officer is assigned, one (1) shall be designated as chief. If the appeal is to be heard by the full board, the chairman shall serve as the chief hearing officer.~~

Section 2. Continuances. (1) A party may request a continuance of a scheduled hearing for good cause. The request shall be in writing, shall state the reason for the request and include proposed dates for rescheduling. The request shall be filed with the board, through the office of the executive director, and mailed to all parties at least ten (10) days prior to the scheduled hearing.

(2) A party objecting to a requested continuance may file a written objection stating the reason. An objection shall be filed with the board, through the office of the executive director, within five (5) days prior to the scheduled hearing. Copies shall be mailed to all parties.

(3) A continuance may be granted by the hearing officer for good cause.

(4) A request for a continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the executive director shall execute and transmit to all parties an interim order either

granting or denying the continuance. If the continuance is granted, the interim order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 3. Prehearing Procedures. (1) A motion, request or filing shall be in writing, filed with the board through the office of the executive director, and served on all parties.

~~(2) [An interim order by the hearing officer shall be executed and transmitted by the executive director to all parties.] An interim order shall not be reviewable by the board except on final review, unless otherwise provided in the interim order.~~

~~(3) If an employee retains counsel subsequent to filing his appeal, his attorney shall file a written entry of appearance. [Subsequent notices, correspondence, and orders shall be transmitted to that attorney and subsequent filings and motions on behalf of the employee shall be submitted by that attorney.]~~

(4) An employee shall notify all parties and the board in writing of a change of address.

~~(5) [A list of witnesses who may be called to testify shall be filed by each party at least five (5) days prior to the scheduled hearing. Failure of a party to file a witness list within the prescribed time shall restrict that party to rebuttal.]~~

~~(6) [Kentucky Personnel Board subpoena forms shall be available in the office of the executive director and shall be issued by the executive director. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.]~~

~~(6) [(7)]~~ Depositions may be taken only in extraordinary circumstances and upon authorization by the hearing officer. A request to take a deposition shall be filed at least fifteen (15) ~~[seven (7)]~~ days prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled hearing.

~~(7) [(8)]~~ Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of any party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.

~~(8) The hearing officer may schedule a prehearing conference to define the issues, determine which facts, if any, can be stipulated, rule on pending motions or requests, and address any other matter which will facilitate the hearing.]~~

~~(8) [(10)]~~ An agreed settlement shall be submitted in writing for review and final action by the board.

~~[(11) The executive director, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:~~

~~(a) Procedural questions.~~

~~(b) Scheduling of hearings.]~~

Section 4. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal. ~~[The hearing officer shall make all decisions and rule on all matters concerning the conduct of the hearing. He shall require an orderly and proper decorum at the hearing, and shall be authorized to require compliance with his rulings.]~~

~~(2) Failure of a party to appear at the hearing may result in an adverse ruling against that party.~~

~~(3) The rules of civil procedure shall not apply.~~

~~(4) The hearing officer shall direct one of the parties to present its case first, examine witnesses and submit documentation, subject to cross examination. The opposing party shall then present its case, examine witnesses and submit documentation, subject to cross examination.]~~

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~~(2) [(5)] Parties shall provide four (4) copies of an exhibit that is to be introduced as evidence. Copies shall be prepared prior to the hearing.~~

~~[(6)] The proceedings and evidence presented may be recorded by a court reporter or by video or audio equipment.~~

~~Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record.~~

~~(2) At the direction of the hearing officer, the recommended order shall be entered and transmitted by the executive director to all parties.~~

~~(3) Unless otherwise directed by the hearing officer at the time the recommended order is entered, a party may submit written exceptions to the findings of fact and recommendations. Exceptions shall be filed with the board through the office of the executive director within ten (10) days of entry of the recommended order, and served on all parties.~~

~~(4) A party may submit a written response to exceptions filed with the board. Unless otherwise directed by the hearing officer at the time the recommended order is entered, the response shall be filed with the board through the office of the executive director within twenty (20) days of entry of the recommended order, and served on all parties.~~

~~(5)(a) If the recommended order entered by the hearing officer recommends immediate reinstatement and the appointing authority objects to this recommendation, it shall file a written request that reinstatement be stayed until appeals are exhausted.~~

~~(b) The objection and request shall:~~

~~1. Completely state the grounds relied upon by the appointing authority; and~~

~~2. Be filed with the board and served upon the appellant or his counsel within fifteen (15) days of date the recommended order is entered.]~~

~~Section 5. [6-] Board Review and Action. Following consideration by the full board, a final order shall be entered disposing of the appeal. The order shall be prepared, executed and entered at the direction of the board by the secretary to the board. [Copies of the order shall be transmitted to all parties by the executive director.]~~

~~Section 6. [7-] Incorporation by Reference. (1) "Kentucky Personnel Board Appeal Form (3-25-91)", and "Kentucky Personnel Board Subpoena Form (2-90)" are incorporated by reference.~~

~~(2) These forms may be inspected, copied or obtained at the Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.~~

PETE B. OWENS, Chairman

APPROVED BY AGENCY: September 13, 1996

FILED WITH LRC: October 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 1996, at the hour of 9 a.m., at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 18, 1996, five working days prior to the scheduled hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administra-

tive regulation to: R. Hanson Williams, Executive Director, Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, Telephone: (502) 564-7830.

REGULATORY IMPACT ANALYSIS

Contact Person: R. Hanson Williams

(1) Type and number of entities affected: All state agencies with classified employees.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Cost of living and employment not affected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Cost of doing business not affected.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Compliance does not result in increased reporting, paperwork or cost.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No new source of revenue required.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No economic impact.

(b) Kentucky: No public comments received. No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on environment and public health will result if not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect will result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This amendment only deletes duplications between this regulation and KRS Chapter 13B.

**FINANCE AND ADMINISTRATION CABINET
Board of Hairdressers and Cosmetologists
(Amendment)**

201 KAR 12:082. School's course of instruction.

RELATES TO: KRS 317A.060(1), 317A.090

STATUTORY AUTHORITY: KRS 317A.060(1), 317A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1) authorizes the board to promulgate administrative regulations governing schools of cosmetology. KRS 317A.090 establishes the requirements for schools of cosmetology. KRS 317A.050(7)(d) provides that a license to operate a school of cosmetology may be granted if the applicant has complied with applicable statutes and administrative regulations governing schools of cosmetology. This administrative regulation establishes requirements for the course of instruction of schools of cosmetology pursuant to the cited sections of KRS Chapter 317A.

Section 1. The regular courses of instruction for cosmetology students shall contain the following:

(1) Professional practices.

(a) The cosmetology profession.

1. Cosmetology vocabulary.

2. Brief history: how it began, and changes.

3. Ethics: ethics in a beauty salon; and salon conduct.

(b) Salon procedures.

1. Hygiene and good grooming: personal and public; personal characteristics; and responsibilities of the cosmetologists.

2. Professional attitudes and salesmanship; personality development; salesmanship and business management; customer relationship; and telephone personality.

3. Public relations and psychology: behavior; and proper image.

(c) Specialty services.

1. Facial treatments and make-up: facial treatment/make-up preparation; implements and supplies; procedure in giving a plain facial; purpose and effect of message movements; facial cosmetics; special problems; eyebrow arching; and lash and brow dye.

2. Nail technology (Manicuring): purpose and effect; preparation; equipment; and procedures, including the following: plain manicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of lacquer, and application of artificial nails.

(2) Life sciences (general anatomy).

(a) Osteology: definition; and functions.

(b) Myology: definition; functions; and types.

(c) Neurology: definition; functions; types (motor and sensory); and principal nerves of the head, face and neck.

(d) Angiology: definition; composition of blood; and function of blood.

(e) Dermatology: structure of skin; functions of skin; appendages of skin; conditions of the skin; and lesions of the skin.

(f) Trichology: structure of hair; composition; blood and nerve supply; growth and regeneration; color, texture, elasticity, porosity; and conditions to be recognized.

(g) Nails: structure and composition; growth and regeneration; and irregularities.

(3) Physical sciences (chemistry and treatment).

(a) Chemistry.

1. Elements, compounds, and mixtures: properties of; acid and alkali; and chemistry of water.

2. Composition and uses of cosmetics: for the body; for the skin and face; and for the scalp and hair.

3. Chemistry of hair lightening.

4. Chemistry of hair coloring.

5. Chemical hair relaxing.

6. Chemistry of make-up.

7. Chemistry of facial treatments.

8. Chemistry of rinses: soaps and shampoos; and detergents.

9. Chemistry of cold waving.

(b) Scalp and hair treatments: purpose and effects; preparation and procedure; use of cap; electricity and therapeutic ray; and safety rules.

(c) Shampoos and rinses: importance of good shampoo; purpose of effects; required materials and implements; brushing and drying; types of shampoos; rinses (not colored); and composition.

(d) Hair coloring: principal reasons for coloring; advantages of coloring; classifications of hair coloring; variation of products; procedures; and safety measures.

(e) Hair lightening: types of lighteners; implements and supplies; procedure; special problems in hair lightening; fillers and toners; removal of aniline derivative tints; and tint back to natural coloring.

(f) Cold waving: basic requirements; scalp and hair analysis; hair porosity; hair texture; hair elasticity; hair density; curling rods and chemicals; variation of permanent wave products; procedures; problems; and safety measures.

(g) Sterilization and sanitation: definitions; importance; sterilization rules; and methods of sterilization.

(4) Hair designing or sculpturing.

(a) Hair shaping: fundamentals of hair shaping; correct use of tools; designing and planning the hair cut; sectioning and thinning; razor and shear shaping; wig shaping; and safety precautions.

(b) Hair styling: finger waving; pin curls; hair partings; artistry hair styling; dressing of the coiffure; special consideration in hair styling; chemical hair relaxing and styling; facial types; and hair pressing and types of hot-iron curling.

(c) Care and styling of wigs: purpose; quality; types of wigs; ordering wigs; cleaning; shaping; tinting and color rinsing; setting; and safety precautions.

Section 2. Schools shall teach the students of the various supplies and equipment used in the usual salon practices.

Section 3. Schools shall have the following charts or visual aids available for students' use:

(1) Charts or visual aids showing anatomy of muscles of face and neck with special reference to the direction of muscle fibers and function of muscle or groups of muscles;

(2) Charts or visual aids showing anatomy of nails.

Section 4. A student shall receive not less than 1,800 hours in clinical class work and scientific lectures with 450 minimum lecture hours for science and theory and 1,305 minimum clinic and practice hours; and forty-five (45) hours of applicable Kentucky statutes and administrative regulations.

Section 5. One (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and the administrative regulations of the board.

Section 6. A school of cosmetology shall not be granted a license to operate a school of cosmetology or annual renewal of license unless the following curriculum is maintained and taught.

(1) Curriculum for freshmen students.

(a) Theory and related theory class, 100 hours.

1. General theory, including Kentucky cosmetology law and applicable administrative regulations.

2. Clinical theory.

3. Lecturing theory.

(b) Clinical and related theory class (freshman practice class on students or mannequins), 200 hours.

1. Cold waves.

2. Facials and make-up.

3. Complete "S" formations or complete finger waves.

4. Pin curl technique.

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5. Hair shaping.
6. Hair styling techniques.
7. Lash and brow tint.
8. Eyebrow arches.
9. Nail technology. [Manicuring-]
10. Scalp treatments.
11. Shampooing.
12. Hair coloring, bleaching, and rinsing (mixing and formulas).
13. Heat permanent.
14. Safety measures.

(2) Curriculum for junior and senior students.

(a) Theory and related theory class, 500 hours.

(b) Professional practices, life sciences (general anatomy), physical sciences (chemistry and treatment), hair designing safety measures, Kentucky cosmetology laws and applicable administrative regulations.

(c) Clinical class, 1,000 hours.

1. Hair conditioning treatments.
2. Scalp treatments.
3. Hair shaping.
4. Shampoos.
5. Cold waves.
6. Chemical hair relaxing (permanent wave).
7. Complete "S" formation and complete finger waves.
8. Pin curl techniques.
9. Hair styles.
10. Iron curling.
11. Hair coloring and toning.
12. Bleaches and frostings.
13. Facials and make-up.
14. Nail technology. [Manicuring-]
15. Lash and brow tints.
16. Eyebrow arches.
17. Color rinses (certified color).
18. Wiggery.
19. Professional ethics and good grooming.
20. Salesmanship.
21. Reception desk and telephone answering.
22. Recordkeeping.
23. Dispensary (procedures for ordering supplies and retail merchandise).
24. Personality development.
25. Salon management.
26. Public relations.

Section 7. In addition to the regular course of instruction, cosmetology schools may have two (2) related lectures and demonstrations per month.

Section 8. Time not utilized in theory or clinic work shall be used for study periods or library work.

Section 9. A school shall furnish students text books that have been approved by the board.

Section 10. Students of cosmetology shall not be permitted to work on the public until they have completed 300 hours of instruction.

Section 11. Students of cosmetology may be allowed eight (8) hours per day for two (2) out-of-school activities per 1,800 hours pertaining to the profession of cosmetology if reported to the board office on "Certification of Cosmetology Field Trip * Hours (95)" form, or "Certification of Cosmetology Student Education Show * Hours (95)" form, as appropriate.

Section 12. Students of cosmetology may be permitted to attend two (2) educational programs within their 1,800-hour course for eight

(8) hours credit per day, if reported to the board office on "Certification of Cosmetology Field Trip * Hours" form, or "Certification of Cosmetology Student Education Show * Hours" form, as appropriate.

Section 13. Copies of the Kentucky State Board of Hairdressers and Cosmetologists' statutes and administrative regulations shall be made available to all students.

Section 14. Nail technician [Manicurist] curriculum shall include the following:

(1) Science and theory; 200 [400] hours.

(a) Equipment, sterilization, sanitation, chemistry and types of artificial nails, public and personal hygiene safety measures, statutes and administrative regulations governing cosmetology and nail technology.

(b) Nail condition and manicure techniques.

(c) Hand and arm message.

(d) Science pertaining to areas of hands and arms.

(e) Personality, grooming, salon management, professional ethics, and cosmetic theory laws.

(f) Nails: structure and composition; growth and regeneration; and irregularities.

(2) Clinical; 400 [200] hours.

(a) Oil and plain manicure.

(b) Nail polish changes, moons, half-moons, and tips.

(c) Hand and arm message.

(d) Safety measures.

(e) Care of equipment.

(f) Removal of stains.

(g) Repair work including wraps and tips.

(h) Buffing.

(i) Application of lacquer.

(j) Application of artificial nails.

Section 15. The course of study and curriculum for an apprentice instructor shall include as minimums, with a total of 1,000 hours, the following:

(1) Orientation, fifteen (15) hours.

(2) Psychology of student training, fifty (50) hours.

(3) Introduction to teaching, thirty (30) hours.

(4) Good grooming and personality development, fifty (50) hours.

(5) Course outlining and development, forty (40) hours.

(6) Lesson planning, forty-five (45) hours.

(7) Teaching techniques (methods), eighty (80) hours.

(8) Teaching aids, audio-visual techniques, eight (80) hours.

(9) Demonstration techniques, fifty-five (55) hours.

(10) Examinations and analysis, sixty (60) hours.

(11) Classroom management, forty-five (45) hours.

(12) Recordkeeping, twenty-five (25) hours.

(13) Teaching observation, sixty-five (65) hours.

(14) Teacher assistant, ninety (90) hours.

(15) Pupil teaching (practice teaching), 270 hours.

Section 16. A student instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. A student instructor shall not assume any of the duties and responsibilities of a licensed supervising instructor.

Section 17. All records of apprentice instructors' hours earned shall be recorded on a standard form supplied by the board office on or before the tenth day of each month.

Section 18. If the board permits a student to enroll in a school for a special brush-up course in any of the following subjects, the student shall be required to have a course of training of the following number of hours in the course or courses he desires to take:

(1) Permanent waving, and all chemical control, 150 hours.

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- (2) Nail technology [Manicuring], hand and arm massage, and application of artificial nails [bleach], 100 hours.
- (3) All iron curls, 100 hours.
- (4) Facials, 125 hours.
- (5) Hair coloring and bleaching, 150 hours.
- (6) Scalp massage, 25 hours.
- (7) Hair shaping, trimming, and thinning, 125 hours.
- (8) Science, 100 hours.
- (9) Hair dressing and styling, 150 hours.

Section 19. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Certification Of Cosmetology Field Trip * Hours (1995)"; and
- (b) "Certification Of Cosmetology Student Education Show * Hours (1995)".

(2) These forms may be inspected, copied, or obtained at Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHIRLEY MEDLEY, Chairman

APPROVED BY AGENCY: September 3, 1996

FILED WITH LRC: September 24, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, November 25, 1996, at 10:30 a.m. at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 18, 1996, five workdays 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 the contact person.

CONTACT PERSON: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts

(1) Type and number of entities affected: Unknown - the number will depend on future enrollees.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no changes.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no increase in cost of doing business by the promulgation of this administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There may be an increase in the cost of the course offered by schools of cosmetology.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no additional reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None needed.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods are not available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The health and welfare of the public will be protected by assuring that the proper procedures, products and chemicals are used when applying artificial nails; the necessary and appropriate methods of sanitation and sterilization are used in the cleansing of implements to prohibit the spread of infection or disease.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would result, as evidenced in other states, if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Detrimental effects include: staph infections, fungus, spreading of other skin diseases, chemical burns and reactions.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which may be in conflict, overlapping, or duplicating.

(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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering was not necessary as only one type of license was affected.

TOURISM CABINET

Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:016. Use of public lands and waters at department-owned lakes.

RELATES TO: KRS 150.025, 150.090, 150.620, 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation governs private boat docks on department-owned property [waters], the use of lake water for domestic purposes and permitted and prohibited activities on department-owned and controlled land surrounding department-owned waters. [This amendment is necessary to place a term of five (5) years on boat dock permits, specify procedures for applying for and cancelling boat dock permits, limit dock size, delete the limits on the number of boats permanently moored at docks, and bring the wording and formatting requirements into compliance with KRS Chapter 13A.]

Section 1. Definitions. (1) "Adjacent property owner" means the

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owner of real property that shares a common boundary with department property.

(2) "Boat dock" means a privately owned floating or fixed structure in a lake owned, leased or otherwise controlled by the department.

(3) "Department property" means lands or waters owned, leased or otherwise controlled by the department at the [and surrounding] public fishing lakes listed in Section 2 of this administrative regulation.

(4) "Enclosed superstructure" means a roofed structure with solid, glass, screen or similar walls, but does not include dock boxes and similar storage containers less than four (4) feet high.

(5) "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

Section 2. Boat Dock Permits. (1) Adjacent property owners may construct boat docks on department property if their property:

(a) Would be lake-front property if not for the intervening department property;

(b) Shares at least a fifty (50) foot boundary with department property; and

(c) ~~[(b)]~~ Is located at one (1) of the following lakes: Beaver, Boltz, ~~[Bullock Pen,]~~ Carpenter, Corinth, Elmer Davis, Guist Creek, Kincaid, Kingfisher, or Malone.

(2) Boat dock permits:

(a) ~~[Shall cost twenty-five (25) dollars.]~~

~~(b) Shall be valid for the year of issue and five (5) additional calendar years.~~

~~(c) Shall entitle the holder to construct one (1) boat dock meeting the specifications described in Section 4 of this administrative regulation.~~

~~(d) [(d)]~~ May be renewed by:

1. Paying the ~~[appropriate]~~ fee as specified in 301 KAR 3:022; and

2. Submitting an affidavit that unauthorized additions or modifications have not been made to the dock or walkway.

(3) A person who owns multiple contiguous properties adjacent to department property shall:

(a) ~~[Shall]~~ Not be issued more boat dock permits than the number of dwellings on those properties.

(b) ~~[Shall]~~ Be entitled to one (1) boat dock permit if there are no dwellings on his contiguous properties.

(4) A person who constructed a boat dock under a permit issued before July 1, 1996, [Existing boat dock permits shall expire on June 30, 1996.]

~~(5) Holders of existing boat dock permits shall:~~

(a) Reapply for a new permit; and

~~(b) Bring his dock [after July 1, 1996; and~~

~~(b) Bring their docks] into compliance with the specifications of this administrative regulation by December 3, 1997, except that a dock [docks] built before July 1, 1996 [the effective date of this administrative regulation] may exceed:~~

1. ~~[Exceed]~~ The single dimension limit specified in Section 4 of this administrative regulation by two (2) feet; or

2. ~~[Exceed]~~ The square footage limit specified in Section 4 of this administrative regulation by thirty-two (32) square feet.

Section 3. Constructing Boat Docks. (1) A person ~~[Persons]~~ wishing to construct a boat dock shall:

(a) Submit a boat dock application on forms provided by the department, accompanied by:

1. The permit fee; and

2. Proof that the applicant's property is adjacent to department lands.

(b) Not begin construction until he has been ~~[they are]~~ issued a construction permit from the department. This permit shall be in addition to other required building permits.

(c) Inform the department when:

1. Construction of new docks is complete; or

2. Existing docks have been brought into compliance.

(d) Allow inspection of the dock by department employees.

(2) The department shall issue a boat dock permit and tag to a boat dock owner[s] whose dock[s] passes ~~[successfully complete]~~ a final inspection for compliance with the provisions of this administrative regulation.

(3) The dock owner shall affix the tag issued with the permit to the edge of the dock facing the lake.

(4) The Boat Dock Application Form (1996) is incorporated by reference. It may be inspected and copied at the Division of Fisheries, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3596, between 8 a.m. and 4:30 p.m. Eastern Time on business days.

Section 4. Boat Dock and Walkway Specifications. (1) A person ~~[Persons]~~ shall not construct a boat dock[s] that:

(a) Measures more than sixteen (16) feet in any dimension;

(b) Has ~~[Have]~~ a surface area of more than 128 square feet;

(c) Has ~~[Have]~~ enclosed superstructures;

(d) Has ~~[Have]~~ unenclosed superstructures or other features not specified in the boat dock permit; or

(e) Uses metal drums or other flotation devices that will sink when punctured.

(2) A walkway ~~[Walkways]~~ connecting the bank and the dock shall:

(a) ~~[Shall]~~ Be perpendicular to the shoreline.

(b) ~~[Shall]~~ Be anchored to department property at the shoreline using either:

1. A concrete pad no larger than ten (10) square feet; or

2. Two (2) metal posts at each side of the walkway.

(c) ~~[Shall]~~ Not be wider than four (4) feet.

(d) ~~[Shall]~~ Be the shorter of:

1. A length sufficient to reach a water depth of two (2) feet when the lake is at normal pool; or

2. Twenty (20) feet in length.

(e) ~~[Shall]~~ Not be used for boat mooring.

Section 5. Revocation of Permits. (1) The department shall ~~[may]~~ cancel a boat dock permit if the permit holder:

(a) Makes additions or modifications to the dock or walkway without written permission from the department; or

(b) Fails to:

1. Renew the boat dock permit within sixty (60) days of expiration; or

2. Maintain the dock or walkway in a structurally sound condition.

(2) After notification in writing by the department that a permit has been canceled, a person shall remove from department property within sixty (60) days:

1. The dock;

2. The walkway; and

3. The structures used to anchor the walkway.

Section 6. Use of Water. (1) A person ~~[Adjacent property owners]~~ shall not take water from the lake without the written consent of the department.

(2) The department shall not grant permission to take water from lakes other than:

(a) For the residential use of adjacent property owners; or

(b) For temporary emergency use in times of drought.

Section 7. Cutting Weeds or Grass. An adjacent property owner[s] may cut weeds or grass, or clear underbrush less than two (2) inches in diameter, from department lakefront property which joins his ~~[their]~~ property.

Section 8. Structures or Equipment on Department Property. (1)

A person [Persons] shall not place roads, ramps, buildings, steps, fences, gardens, or structure on department property.

(2) Without written permission from the department, a person [persons] shall not:

- (a) Place objects or structures at the water's edge to stabilize banks; or
- (b) Place or use mechanical equipment on department property.
- (3) The department shall not issue permits for mechanical equipment or bank stabilization unless in the best interest of the lake, the public, and other adjacent property owners.

Section 9. Waivers and Appeals. (1) A person [Persons] with docks, walkways, structures or mechanical equipment that were in place before the effective date of, but do not meet the standards contained in, this administrative regulation may apply to the department for a waiver.

(2) In deciding whether to grant or deny a waiver, the department shall consider:

- (a) Whether the dock, structure or mechanical equipment:
 - 1. Is in substantial compliance with this administrative regulation;
 - 2. Poses a potential safety hazard;
 - 3. Is in sound structural or mechanical condition;
- (b) The geological or other physical features of the lake and the specific location; and
- (c) The applicant's history of compliance with previous administrative regulations governing boat docks and structures on department property.
- (3) A person [Persons] whose waiver requests are denied may request a hearing.
 - (a) The department shall appoint hearing officers and conduct hearings in accordance with the provisions of KRS Chapter 13B.
 - (b) The hearing officer shall make his recommendations to the Department of Fish and Wildlife Commission.
 - (c) The commission shall make its decision by majority vote.
 - (d) Appeals of the commission's decision shall be in accordance with the provisions of KRS Chapter 13B.
- (4) A person [Persons] who has [have] not been granted a permit [permits or waivers] as specified in this administrative regulation shall remove nonpermitted or nonwaivered docks, structures or mechanical equipment from department property before December 31, 1997.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1996, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 20, 1996, five working 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: John Wilson, Assistant Director, Division of Public Affairs/Policy, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: There are approximately 500 current boat dock permit holders, an estimated 100 unpermitted and illegal dock owners who will be affected by this administrative regulation. There are also approximately 50 new applications annually for boat dock permits.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Current permit holders are required to reapply for new permits during the first year after this administrative regulation is adopted. Docks which do not meet the standards of this administrative regulation must be brought into compliance and properly permitted.

2. Second and subsequent years: All permits must be renewed every five years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be minor costs associated with re-issuing permits and inspecting boat docks for compliance.

2. Continuing costs or savings: There will be minor costs associated with reapplication and inspections.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: Because of the five-year renewal process, there will be a slight increase in paper work and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation should have no impact on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Game and Fish Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received; this administrative regulation should produce no economic impacts in the geographical areas where it is implemented.

(b) Kentucky: No public comments received; this administrative regulation should produce no economic impacts in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of continuing the present system of permitting docks was rejected because there is no provision for follow-up inspections or renewal of permits. The alternative of not regulating boat docks was rejected because of the potential of abuse of public resources. The alternative of not requiring boat dock permits was rejected because the department needs to control these structures to assure that they do not become hazards or interfere with the use of these lakes by the public.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a positive impact on public safety by regulating the size of boat docks on small lakes so these structures do not become an hazard to navigation.

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(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without regulation of the size of boat docks on small lakes, these structures could become hazards to navigation and negatively impact public safety. Also, these structures, if unregulated, could interfere with other recreational uses of these bodies of water, to the detriment of public recreation.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None have been identified.

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was used to the extent that owners of existing boat docks and other structures on department property were given special consideration. In other respects, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of 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.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:140. Seasons for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.092, ~~150.170,~~ 150.175(4), 150.305, ~~150.320, 150.330,~~ 150.360, 150.365, 150.390, 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) require the department to promulgate administrative regulations governing wild turkey hunting. The function of this administrative regulation is to assure the continued protection and conservation of wild turkey populations, and a permanent and continued supply for present and future residents of the state. ~~[This amendment is necessary to designate currently appropriate turkey hunting requirements and seasons for specific counties and wildlife management areas, and to comply with the wording and formatting requirements of KRS Chapter 13A.]~~

Section 1. Definitions. (1) "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.

(2) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

(3) "Modern gun deer season" means the five (5) or ten (10) day period, as specified in 301 KAR 2:172, when deer hunting with modern firearms is permitted.

(4) "Quota hunt" means a hunt whose participants register in advance and are selected by a drawing.

(5) "Statewide seasons" mean the provisions of Sections 1 through 8 of this administrative regulation.

(6) "Youth hunt" means a hunt open to persons at least ten (10) years old but who have not reached their 16th birthday by the day of the hunt. ~~["Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.~~

~~(2) "Quota hunt" means a hunt whose participants register in advance and are selected by a drawing.~~

~~(3) "Statewide seasons" mean the provisions of Sections 1 through 7 of this administrative regulation.~~

~~(4) "Youth hunt" means a hunt open to persons at least ten (10) years old but who have not reached their 16th birthday by the day of the hunt.~~

~~(5) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.]~~

Section 2. [Seasons and Counties Open to] Wild Turkey Hunting Statewide Seasons and Shooting Hours. (1) A person shall not take wild turkeys:

(a) Except on the dates and during the times specified:

1. In this section;

2. In Section 9 of this administrative regulation; or

3. In 301 KAR 2:111.

(b) By means other than those specified in this administrative regulation.

(2) [Season dates and shooting hours:

(a) Spring[: gun and archery season. A person may take wild turkeys:

(a) For twenty-one (21) [~~fourteen (14)~~] consecutive days beginning on the Monday closest to April 15, [~~the third Wednesday in April~~];

(b) From: one-half (1/2) hour before sunrise until 1 p.m.

(c) Using firearms or archery equipment subject to the restrictions of Section 6 of this administrative regulation.

(3) Fall archery season. A person may take wild turkeys:

(a) From [~~(b) Archery only,~~] October 1 through December 31 [~~November 30~~], except during the modern gun deer season[: daylight hours].

(b) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(c) Using archery equipment subject to the restrictions of Section 6 of this administrative regulation.

[(2) During the 1995 spring and fall seasons, the following counties and portions of counties are open to turkey hunting: Adair, Allen east of Highway 31E, Anderson, Ballard, Barron north of I-65 and Barron south of the Cumberland Parkway, Bath south of I-64, Bell, Boone, Boyd south of I-64, Boyle except west of Highway 68, Brecken, Breathitt east of Highway 15, Breckinridge, Bullitt, Butler, Caldwell, Callaway, Carlisle, Campbell, Carroll, Carter north of I-64, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess north of Highway 54, Edmonson, Elliott, Estill, Fayette, Floyd except east of Highway 80 and south of Highway 460, Franklin except south of Highway 12 O'Nan's Bend Road and west of Kentucky River, Fulton, Gallatin, Garrard, Grant north of Highway 22 and west of I-75, Graves, Grayson, Green, Hancock southeast of Highway 1380, Hardin, Harlan, Harrison east of Highway 27, Hart, Henry, Henderson west of Highway 41, Hickman, Hopkins, Jackson north of Highway 30, Jefferson, Jessamine south of Highway 160, Johnson north of Highway 460 and west of Highway 23, Kenton, Knott, Knox south of Highway 25E and east of Highway 11, and north of Highway 25E and east of Highway 223, Larue except south of Highway 61 and west of Highway 31E, Laurel west of I-75, Lawrence, Lee west of Highway 11, Letcher, Lincoln, Livingston, Logan, Lyon, Madison east of I-75, Magoffin south of Mountain Parkway west of Salyersville and south of Highway 114 east of Salyersville, Marion, Marshall, Martin, Mason, McLean south of Highway 138 and west of Highway 31, McCracken, McCreary, Meade, Menifee, Mercer except south of Highway 1160 and west of Highway 127, Metcalfe, Monroe, Morgan north of the Licking River, Muhlenberg, Nelson, Ohio, Oldham, Owen, Owsley, Pendleton, Perry, Pike east of Highway 23, Powell, Pulaski except north of Highway 80 and west of Highway 461, Robertson, Roane east west of I-75 and Roane east of Highway 1055, Rowan, Russell, Scott east of I-75, Shelby, Simpson west of Highway 31W, Spencer, Taylor, Todd, Trigg, Trimble, Union north of Highway 360 east of Uniontown, Warren north of Highway 80 and west of Highway 185, Washington, Wayne, Webster west of Highway 41A, Whitley north of

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~~the Cumberland River and west of I-75, Wolfe north of Mountain Parkway and west of Highway 746, and Woodford.~~

~~(3) All other counties and portions of counties are closed to wild turkey hunting except as specified in Section 8 of this administrative regulation.~~

~~(4) In 1996 and subsequent years, all counties shall be open to wild turkey hunting.~~

Section 3. Permit Requirements. Unless exempted by KRS 150.170, a person hunting wild turkeys:

(1) During the spring season shall possess a spring turkey hunting permit.

(2) During the fall season shall possess a fall turkey hunting permit.

Section 4. Bag and Possession Limits. Except as specified in Section 9 [8] of this administrative regulation and by 301 KAR 2:111, a person shall not take more than:

(1) One (1) turkey per day;

(2) Two (2) turkeys with visible beards during the spring season;

(3) Two (2) turkeys [One (1) turkey] of either sex during the fall archery season.

Section 5. [4-] Juvenile Hunters, Tagging and Checking. (1) An adult shall accompany and maintain control of turkey hunters under sixteen (16) years of age.

(2) After taking wild turkeys, and before moving the carcass, a person [persons] shall:

(a) Cut, punch, or mark with ink or indelible pencil the number and month on the carcass tag portion of the turkey permit corresponding to the current date. [Immediately attach the transportation tag portion of the turkey permit to the carcass.]

(b) Attach the tag to the carcass:

1. While transporting the turkey by vehicle; or

2. Whenever the hunter is not in physical possession of the carcass.

(c) Have the turkey checked:

1. At a check station; or

2. By an authorized employee of the department;

3. During the spring season, on the same day it was taken;

4. During the fall season, by 9 a.m. on the day following the day it was taken.

[1. At a check station; or

2. By an authorized employee of the department.]

(d) [(e)] Fill out a game check card and return it to the person checking the turkey.

(e) [(f)] Keep the hunter's portion of the game check card in possession until the turkey is processed.

(f) [(g)] Attach to turkeys taken to a taxidermist:

1. The taxidermy portion of the game check card;

2. A Ft. Campbell game check card; or

3. A Land Between the Lakes game check card.

(g) [(h)] Check turkeys before transporting them out of Kentucky.

(3) A person [Persons] taking turkeys on wildlife management areas shall follow the tagging and checking requirements in Section 8 of this administrative regulation or in 301 KAR 2:111.

(4) A person exempt from turkey tag requirements by KRS 150.170 shall:

(a) Write his name, address, the date when, and the county where, the turkey was taken on a card:

1. Immediately after taking a turkey; and

2. Before moving the carcass.

(b) Attach the card to the carcass:

1. While transporting the carcass by vehicle; or

2. Whenever he is not in physical possession of the carcass.

Section 6. [6-] Firearms and Archery Equipment. A person

[Persons] hunting wild turkey shall not use or carry:

(1) Rifles or handguns.

(2) Shotguns larger than ten (10) gauge or smaller than twenty (20) gauge.

(3) Shot larger than Number Four (4).

(4) Shotgun slugs.

(5) Firearms during archery-only seasons.

(6) Crossbows, except on the Pioneer Weapons Area.

(7) Barbed broadheads.

(8) Broadheads smaller than seven-eighths (7/8) inch wide.

(9) Arrows with chemical treatments or attachments containing chemicals.

Section 7. [6-] Baiting. (1) A person shall not hunt wild turkeys on a baited area or by the aid of baiting:

(a) While bait is present; or

(b) For thirty (30) days after the bait has been removed.

(2) A person [Persons] may hunt wild turkeys on areas where grains, feed or other substances exist as the result of:

(a) Bona fide agricultural practices; or

(b) Manipulating a crop for wildlife management purposes, provided that grain, feed or other substances once removed from a field are not returned to or scattered on the field.

Section 8. [7-] Turkey Hunting Restrictions. (1) A person hunting wild turkeys [Turkey hunters]:

(a) Shall not use dogs.

(b) Shall not hunt from boats.

(c) Shall not use electronic calls.

(d) May use hand- or mouth-operated calls.

(e) Shall not use live decoys.

(f) Shall not take roosting turkeys.

(2) A person [Persons] shall not mimic the sound of a turkey:

(a) From March 1 until the opening of the spring season;

(b) In areas open to hunting where turkeys are reasonably expected to occur.

[(3) Persons shall not take turkeys by means other than those specified in this administrative regulation.]

Section 9. [8-] Seasons and Exceptions on Wildlife Management Areas. (1) Statewide seasons apply to wildlife management areas [located in counties or portions of counties listed in Section 2 of this administrative regulation] unless otherwise specified in this section.

(2) A person [Persons] shall not hunt wild turkeys on the areas listed in this section except on the dates specified in this administrative regulation or in 301 KAR 2:111.

(3) Turkeys listed as bonus birds shall not:

(a) [Do not] Count against statewide limits.

(b) [Do not] Require a carcass tag portion of the turkey permit [state transportation tag] be attached to the carcass.

(4) Ballard Wildlife Management Area [Ballard County].

(a) Season. Quota youth hunt, the Saturday and Sunday before [weekend preceding] the Monday closest to April 15 [third Wednesday in April].

(b) Applicants for the quota youth hunt shall participate in a drawing held at 1 p.m. on the [first] Saturday closest to [in] April 1 on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkey shall [Turkey hunters]:

1. [Shall] Check in and out daily.

2. [Shall] Not take more than one (1) turkey.

(5) Fort Campbell Wildlife Management Area [Christian and Trigg Counties].

(a) Season: the last [first] Saturday in March [April] through the second Sunday in May.

(b) Turkeys taken on Fort Campbell shall be [are] bonus birds.

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(c) A person shall ~~[Turkey-hunters]:~~

1. ~~[Shall]~~ Obtain a postcombination hunting-fishing permit before hunting.

2. Not hunt except ~~[Shall hunt only]~~ during daylight hours.

3. ~~[Shall]~~ Not take more than two (2) turkeys per spring season.

4. ~~[Shall]~~ Attach a Fort Campbell game check card to turkeys before leaving the post.

(6) Fort Knox Wildlife Management Area~~[-Hardin,-Bullitt-and Meade-Counties].~~

(a) Seasons: The last Saturday in March through the second Sunday in May. ~~[Saturdays and Sundays in April and the first two (2) Saturdays and Sundays in May.]~~

(b) A person shall: ~~[Turkeys taken on Fort Knox are bonus birds. (e) Turkey-hunters:]~~

1. ~~[Shall]~~ Hunt in assigned areas.

2. ~~[Shall]~~ Check turkeys by 2 p.m. on the day harvested.

3. ~~[Shall]~~ Not take more than one (1) turkey during the ~~[per]~~ spring season.

(7) Grayson Lake Wildlife Management Area in Carter County and the portion in Elliott County east of Bruin Creek.

(a) Seasons: quota youth hunts.

1. The Saturday and Sunday before the Monday closest to April 15 ~~[The weekend preceeding the third Wednesday in April].~~

2. The Saturday and Sunday following the first quota hunt. ~~[The weekend following the fourth Wednesday in April.]~~

(b) An applicant ~~[Applicants]~~ for the quota youth hunts shall participate in a drawing held at 1 p.m. on the ~~[first]~~ Saturday closest to ~~[in]~~ April 1 on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkeys ~~[Turkey-hunters]:~~

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.

(8) Green River Wildlife Management Area~~[-Adair-and-Taylor Counties. Statewide seasons apply except as noted in this subsection].~~

(a) This area shall be open during statewide spring and fall seasons.

(b) Quota youth hunt, the Saturday and Sunday before ~~[weekend preceeding]~~ the Monday closest to ~~[third Wednesday in]~~ April 15.

(c) An applicant ~~[(b)-Applicants]~~ for the quota youth hunt shall participate in a drawing held at 1 p.m. on the ~~[first]~~ Saturday closest to ~~[in]~~ April 1 on the area.

(d) ~~[(e)]~~ Shooting hours for the youth hunt shall be ~~[are]~~ one-half (1/2) hour before sunrise until noon.

(e) A person ~~[(d)-Persons]~~ participating in the youth hunt shall:

1. ~~[Shall]~~ Check in and out daily.

2. ~~[Shall]~~ Not take more than one (1) turkey.

(9) Higginson-Henry Wildlife Management Area~~[-Union-County]. Statewide seasons apply except that a person:~~

(a) Shall not use firearms to hunt turkeys or possess firearms while turkey hunting. ~~[Seasons, archery-only.]~~

1. ~~The third Wednesday in April for nineteen (19) consecutive days.~~

2. ~~October 1 through November 30, except during gun deer hunts.]~~

(b) May hunt wild turkeys during the modern gun deer season.

(c) Shall not hunt wild turkeys on days when the area is open to gun deer hunting.

(c) ~~[Turkey-hunters]~~ Shall check in and check out daily.

(10) Land Between the Lakes~~[-Trigg-and-Lyon-Counties].~~

(a) Seasons.

1. Quota hunts of no more than six (6) days beginning on or after the first Saturday in April ~~[and ending before the third Wednesday in April].~~

2. Up to sixteen (16) days between the first Saturday in April and the second Saturday in May. ~~[Fourteen (14) consecutive days begin-~~

~~ning on the third Wednesday in April.]~~

(b) A person shall: ~~[Turkey-hunters:]~~

1. ~~[Shall]~~ Check in and out.

2. ~~[Shall]~~ Hunt in assigned areas.

3. ~~[Shall]~~ Check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes.

4. ~~[Shall]~~ Affix a Land Between the Lakes game check card and the carcass tag portion of the turkey permit ~~[a state transportation tag]~~ to the carcass.

5. ~~[Shall take turkey only during daylight hours.]~~

6. ~~[Shall]~~ Not take more than one (1) turkey in the spring.

(c) Shooting hours shall be from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(11) Pioneer Weapons Wildlife Management Area~~[-Bath-and Menifee-Counties]. Statewide seasons apply except that a person~~ ~~[turkey-hunters]:~~

(a) Shall not use breech-loading shotguns.

(b) May use crossbows with working safety devices.

(12) Reelfoot National Wildlife Refuge~~[-Fulton-County].~~

(a) Season: quota hunt, the Friday closest to April 1 for three (3) consecutive days.

(b) A person shall ~~[Turkey-hunters]:~~

1. ~~[Shall]~~ Not take more than one (1) turkey.

2. ~~[Shall]~~ Obtain written permission from the area manager ~~[Reelfoot-permits]~~ before hunting.

(13) ~~[Redbird Wildlife Management Area, Clay and Leslie Counties. Statewide seasons apply.]~~

~~[(14)]~~ Swan Lake Wildlife Management Area shall be ~~[-Ballard County,-is]~~ closed to turkey hunting.

~~[(14)]~~ West Kentucky Wildlife Management Area shall be ~~[-McCracken-County,-is]~~ closed to turkey hunting.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1996, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 20, 1996, five working 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: John Wilson, Assistant Director, Division of Public Affairs/Policy, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 15,000 persons hunt wild turkey in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. The amendment to this administrative regulation will have

no impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. The amendment to this administrative regulation will have no impact on cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional paperwork requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Implemented statewide.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative tagging methods were examined during the development of the automated licensing system. No other method than the one adopted allowed carcass tags to be issued by the system.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring tags to be cut or marked so they cannot be reused is a conservation measure that will help keep the harvest of wild turkey within acceptable limits.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Possibly

(c) If detrimental effect would result, explain detrimental effect: Possible overharvest of wild turkey, leading to reduced seasons and lessened hunter opportunity.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

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

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

(10) Any additional information or comments: This amendment requires hunters to mark on the carcass tag the date they took a turkey, and to affix the tag if the carcass is transported by vehicle or if it leaves the hunter's possession while in the field. Because of the department's automated licensing system, adhesive-backed carcass tags can no longer be used.

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons 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.

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

401 KAR 51:017. Prevention of significant deterioration of air quality.

RELATES TO: KRS 224.10-100, 40 CFR 51 Subpart I, Appendix S, Section IV, Part 51, Appendix W, 51.166, 52.21, Part 58, Appendix B, 60, 61, 63, 81.318, 81 Subpart D, 42 USC 7401 to 7671q (Clean Air Act) [(42 USC 7401 et seq.)], 4321 to 4370d (National Environmental Policy Act) [(42 USC 4324)]

STATUTORY AUTHORITY: KRS 224.10-100, 40 CFR 51.166, 52.21, 42 USC 7401 to 7671q (Clean Air Act), [(42 USC 7401 et seq.)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation provides for the prevention of significant deterioration of ambient air quality. The provisions of this administrative regulation are not different nor more stringent than the federal regulation, 40 CFR 51.166.

Section 1. Definitions. Terms not defined in this section shall have the meaning given them in 401 KAR 51:001. ~~[50:040.]~~

(1)(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

(b) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the two (2) year period which precedes the particular date and is representative of normal source operation. The cabinet may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For an emissions unit (other than an electric utility steam generating unit) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(e) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change, if the source owner or operator maintains and submits to the cabinet on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the cabinet if it determines that period to be more representative of normal source postchange operations.

(2) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case-by-case basis and shall consider the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

(3) "Allowable emissions" means the emissions rate of a

stationary source which is calculated using the maximum rated capacity of the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards in Title 401, KAR Chapters 57, 59, 60, and 63, or 40 CFR 60, 61, and 63;

(b) The applicable state or federally approved regulatory emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a state or federally enforceable permit condition, including those with a future compliance date.

(4)(a) "Baseline area" means an intrastate area (and every part of that area designated as attainment or unclassifiable pursuant to 42 USC 7404(d)(1)(A)(ii) or (iii) (Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act), in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established. Area redesignations under 42 USC 7404(d)(1)(A)(ii) or (iii) (Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act), cannot intersect or be smaller than the area of impact of a major stationary source or major modification which:

1. Establishes a minor source baseline date; or

2. Is subject to this administrative regulation and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments shall remain in effect and shall apply in determining the amount of available PM_{10} increments, except that this baseline area shall not remain in effect if the cabinet rescinds the corresponding minor source baseline date in accordance with subsection (27)(b) of this section.

(5) "Baseline concentration" means that ambient concentration level which exists in the baseline area when the applicable minor source baseline date is established. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (c) of this subsection; and

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

(c) The following shall not be included in the baseline concentration and shall affect the maximum applicable allowable increase:

1. Actual emissions at a major source, which result from construction commencing after the major source baseline date; and

2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(6)(a) "Baseline date" means major source baseline date, defined in subsection (24) of this section, or minor source baseline date, defined in subsection (27) of this section.

(b) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 USC 7407(d)(1)(A)(ii) or (iii) (Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act) for the pollutant on the date of its complete application; and

2. For a major stationary source, the pollutant would be emitted in significant amounts, or, for a major modification, there would be a significant net emissions increase of the pollutant.

(7) "Begin actual construction" means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Those activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. For a change in method of operations, this term refers to those on-site activities other than the preparatory activities which mark the initiation of the change.

(8) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under 42 USC 7401 to 7671q (Clean Air Act), which would be emitted from a proposed major stationary source or major modification which the cabinet, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for that source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant. Application of best available control technology shall not result in emissions of a pollutant which would exceed the emissions allowed by an applicable standard under Title 401, KAR Chapters 57, 59, 60, and 63, or 40 CFR Parts 60, 61, and 63. If the cabinet determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, or operational standard, or combination of design, equipment, work practice, or operational standard, may be prescribed instead to satisfy the requirement for the application of best available control technology. That standard shall, to the degree possible, establish the emissions reduction achievable by implementation of the design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(9) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of a vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1987, which has been incorporated by reference in Section 21 of this administrative regulation.

(10) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(11) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy - Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or a similar project funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least twenty (20) percent of the total cost of the demonstration project.

(12) "Commence", for construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(13) "Complete" means, in reference to an application for a permit, that the application contains information necessary for processing the application. Designating an application complete for permit processing does not preclude the cabinet from requesting or accepting additional information.

(14) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in

a change in actual emissions.

(15) "Electric utility steam generating unit" means a steam electric generating unit that is constructed for the purpose of supplying more than one-third (1/3) of its potential electric output capacity and more than twenty-five (25) megawatt electrical output to a utility power distribution system for sale. Steam supplied to a steam distributing system for the purpose of providing steam to a steam-electric generator producing electric energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(16) "Emissions unit" means a part of a stationary source which emits or would have the potential to emit a pollutant subject to regulation under 42 USC 7401 to 7671q (Clean Air Act).

(17) "Federal land manager" means, for lands in the United States, the secretary of the department with authority over those lands.

(18) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 CFR 60, 61, and 63, requirements within an applicable State Implementation Plan (SIP) and any permit requirements established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP, which expressly requires adherence to a permit issued under the program.

(19) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(20) "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.

(21) "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(22) "Low terrain" means an area other than high terrain.

(23) "Major modification" means a physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under 42 USC 7401 to 7671q (Clean Air Act).

(a) A net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair and replacement;
2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;
3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
4. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under a permit condition which was established after January 6, 1975; or

b. The source is approved to use under a permit issued under this administrative regulation or under 40 CFR 52.21;

5. An increase in the hours of operation or in the production rate, unless the change would be prohibited after January 6, 1975, pursuant to 40 CFR 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to this administrative regulation; or under 401 KAR 50:035 and 401 KAR 51:016E; or

6. A change in ownership at a stationary source.

7. The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the cabinet, concurring with U.S. EPA, determines that such addition, replace-

ment, or use renders the unit less environmentally beneficial, unless:

a. The cabinet has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of a criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of 42 USC 7401 to 7515 (Title I of the Clean Air Act), if any; and

b. The cabinet determines that the increase will cause or contribute to a violation of any national ambient air quality standard or prevention of significant deterioration (PSD) increment or visibility limitation.

8. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

10. The reactivation of a very clean coal-fired electric utility steam generating unit.

(24) "Major source baseline date" means:

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988.

(25)(a) "Major stationary source" means:

1. Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a pollutant subject to regulation under 42 USC 7401 to 7671q (Clean Air Act): fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination of fossil fuel boilers) totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. Notwithstanding the stationary source size specified in subparagraph 1 of this paragraph, a stationary source which emits, or has the potential to emit, 250 tons per year or more of an air pollutant subject to regulation under 42 USC 7401 to 7671q (Clean Air Act); or

3. Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(c) For this administrative regulation, the fugitive emissions of a stationary source shall not be included in determining if it is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric, sulfuric, or nitric acid plants;

10. Petroleum refineries;

11. Lime plants;

12. Phosphate rock processing plants;

13. Coke oven batteries;

14. Sulfur recovery plants;

15. Carbon black plants (furnace process);

16. Primary lead smelters;

17. Fuel conversion plants;

18. Sintering plants;

19. Secondary metal production plants;

20. Chemical process plants;

21. Fossil-fuel boilers (or combination of fossil-fuel boilers) totaling more than 250 million BTUs per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; and

27. Any stationary source category which, as of August 7, 1980, is being regulated under 401 KAR Chapters 57, 59, 60, and 63; 40 CFR Parts 60, 61, and 63; or 42 USC 7411 or 7412 (Section 111 or 112 of the Clean Air Act).

(26) "Mandatory Class I federal area" means an area identified in 40 CFR 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(27)(a) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date shall be:

1. For particulate matter and sulfur dioxide, August 7, 1977; and

2. For nitrogen dioxide, February 8, 1988.

(b) A minor source baseline date established originally for the TSP increments shall remain in effect and shall apply in determining the amount of available PM₁₀ increments, except that the cabinet may rescind the minor source baseline date if it can be shown, to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

(28) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(29) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of 401 KAR Chapters 50 to 65 and federal air quality control laws and regulations.

(30)(a) "Net emissions increase" means the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

2. Other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is five (5) years before construction on the particular change commences, but not before January 6, 1975, and the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if the cabinet or the U.S. EPA has not relied on it in issuing a permit for the source under this administrative regulation or 40 CFR 52.21, if the permit is in effect when the increase in actual emissions from

the particular change occurs.

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM₁₀ emissions shall be used to evaluate the net emissions increase for PM₁₀.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is state or federally enforceable from the time that actual construction on the particular change begins; and

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(31) "Pollution control project" means an activity or project undertaken at an existing electric utility steam generating unit in order to reduce emissions from that unit. Such activities and projects are limited to:

(a) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(b) An activity or project to accommodate switching to a fuel that is less polluting than the fuel used prior to the activity or project, including but not limited to natural gas or coal reburning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;

(c) A permanent clean coal technology demonstration project conducted under 42 USC 5903(d) (Title II, section 101(d), of the Further Continuing Appropriations Act of 1985) or subsequent appropriations, up to a total of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. Environmental Protection Agency; or

(d) A permanent clean coal technology demonstration project that constitutes a repowering project.

(32) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(33) "Reactivation of a very clean coal-fired electric utility steam generating unit" means a physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:

(a) Has not been in operation for the two (2) year period between November 15, 1988, and November 15, 1990, and the emissions from that unit continue to be carried in the Kentucky emissions inventory after November 15, 1990;

(b) Was equipped prior to shutdown with a continuous system of emissions control achieving a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for

particulates of no less than ninety-eight (98) percent;

(c) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(d) Is otherwise in compliance with the requirements of 42 USC 7401 to 7671q (Clean Air Act).

(34)(a) "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator of U.S. EPA in consultation with the Secretary of Energy, a derivative of one or more of these technologies, or another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(b) Repowering shall also include an oil or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Department of Energy.

(c) The cabinet shall give expedited consideration to a permit application from a source that satisfies the requirements of this subsection and is granted an extension under 42 USC 7651h (Section 409 of the Clean Air Act).

(35) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit (or a different consecutive two (2) year period within ten (10) years after that change, if the cabinet determines that this period is more representative of normal source operations), considering the effect the change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the cabinet shall:

(a) Consider all the relevant information, including but not limited to, historical operational data, the company's own representations, filings with local, state, or federal regulatory authorities, and compliance plans under 42 USC 7651 to 7651o (Title IV of the Clean Air Act); and

(b) Exclude, in calculating an increase in emissions that results from the particular physical change or change in method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(36) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For this administrative regulation, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include emissions which come from a mobile source, (e.g., the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel).

(37) "Significant" means:

(a) In reference to a net emissions increase or the potential of a source to emit a pollutant listed in Section 22 of this administrative regulation, a rate of emissions that would equal or exceed a rate given in Section 22 of this administrative regulation.

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under 42 USC 7401 to 7671q (Clean Air Act), that is not listed in Section 22 of this

administrative regulation, any emissions rate.

(c) Notwithstanding paragraph (b) of this subsection and Section 22 of this administrative regulation, "significant" means an emissions rate or net emissions increase associated with a major stationary source or major modification which is to be constructed within ten (10) kilometers of a Class I area and has an impact on that area equal to or greater than one (1) $\mu\text{g}/\text{m}^3$ (twenty-four (24) hour average).

(38) "Stationary source" means a building, structure, facility, or installation which emits or may emit an air pollutant subject to regulation under the 42 USC 7401 to 7671q (Clean Air Act).

(39) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the Kentucky SIP and with other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

(40) "Visibility impairment" means a humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

[(1)(a) "Major stationary source" means:

1. Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.): fossil fuel fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination of fossil fuel boilers) totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. Notwithstanding the stationary source size specified in subparagraph 1 of this paragraph, a stationary source which emits, or has the potential to emit, 250 tons per year or more of an air pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.); or

3. Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the changes would constitute a major stationary source by themselves.

(b) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(c) For the purposes of this administrative regulation, the fugitive emissions of a stationary source shall not be included in determining if it is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;

- 14. Sulfur recovery plants;
- 15. Carbon black plants (furnace process);
- 16. Primary lead smelters;
- 17. Fuel conversion plants;
- 18. Sintering plants;
- 19. Secondary metal production plants;
- 20. Chemical process plants;
- 21. Fossil fuel boilers (or combination of fossil fuel boilers) totaling more than 250 million BTUs per hour heat input;
- 22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- 23. Taconite ore processing plants;
- 24. Glass fiber processing plants;
- 25. Charcoal production plants;
- 26. Fossil fuel fired steam electric plants of more than 250 million BTUs per hour heat input; and

27. Any stationary source category which, as of August 7, 1980, is being regulated under 401 KAR Chapters 57 and 59; 40 CFR Parts 60 and 61; or Section 111 or 112 of the Clean Air Act (42 USC 7401 et seq.).

(2) "Major modification" means a physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.).

(a) A net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

- 1. Routine maintenance, repair and replacement;
- 2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under a permit condition which was established after January 6, 1975; or

b. The source is approved to use under a permit issued under this administrative regulation or under 40 CFR 52.21;

5. An increase in the hours of operation or in the production rate, unless the change would be prohibited after January 6, 1975 pursuant to 40 CFR 52.21; after June 6, 1979, pursuant to 401 KAR 51:016; after September 22, 1982, pursuant to this administrative regulation; or under 401 KAR 50:035 and 401 KAR 51:016E; or

6. A change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) An increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before January 6, 1975, and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the cabinet or the U.S. EPA has not relied on it in issuing a permit for the source under this administrative regulation or 40 CFR 52.21, if the permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it shall be

considered in calculating the amount of maximum allowable increases remaining available.

(f) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(g) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is state and federally enforceable from the time that actual construction on the particular change begins; and

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(h) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state and federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means a building, structure, facility, or installation which emits or may emit an air pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.).

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of a vessel. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1987, which has been incorporated by reference in Section 21 of this administrative regulation.

(7) "Emission unit" means a part of a stationary source which emits or would have the potential to emit a pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.).

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations of 401 KAR Chapters 50 to 63 and federal air quality control laws and regulations.

(11) "Begin actual construction" means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. These activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. With

respect to a change in method of operations, this term refers to those on-site activities other than the preparatory activities which mark the initiation of the change.

(12) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.) which would be emitted from a proposed major stationary source or major modification which the cabinet, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for that source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant. Application of best available control technology shall not result in emissions of a pollutant which would exceed the emissions allowed by an applicable standard under 401 KAR Chapters 57 and 59 or 40 CFR Parts 60 and 61. If the secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, or operational standard, or combination of design, equipment, work practice, or operational standard may be prescribed instead to satisfy the requirement for the application of best available control technology. That standard shall, to the degree possible, establish the emissions reduction achievable by implementation of the design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13) "Baseline concentration" means that ambient concentration level which exists in the baseline area when the applicable minor source baseline date is established. A minor source baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (c) of this subsection; and

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

(c) The following shall not be included in the baseline concentration and shall affect the applicable allowable increase:

1. Actual emissions from a major stationary source on which construction commenced after the major source baseline date; and
2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(14)(a) "Major source baseline date" means:

1. For particulate matter and sulfur dioxide, January 6, 1975; and
2. For nitrogen dioxide, February 8, 1988.

(b) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date shall be:

1. For particulate matter and sulfur dioxide, August 7, 1977; and
2. For nitrogen dioxide, February 8, 1988.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act (42 USC 7401 et seq.) for the pollutant on the date of its complete application; and
2. For a major stationary source, the pollutant would be emitted in significant amounts, or, for a major modification, there would be a significant net emissions increase of the pollutant.

(15) "Baseline area" means an intrastate area (and every part of that area) designated as attainment or unclassifiable pursuant to Section 107(d)(1)(D) or (E) of the Clean Air Act (42 USC 7401 et seq.)

in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established. Area redesignations under Section 107(d)(1)(D) or (E) of the Clean Air Act (42 USC 7401 et seq.) cannot intersect or be smaller than the area of impact of a major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to this administrative regulation and would be constructed in the Commonwealth of Kentucky.

(16) "Allowable emissions" means the emissions rate of a stationary source which is calculated using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards in 401 KAR Chapters 57 and 59, or 40 CFR 60 and 61;

(b) The applicable state and federally approved regulatory emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a state and federally enforceable permit condition, including those with a future compliance date.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable state implementation plan and any permit requirement established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart 1, including operating permits issued under an EPA approved program incorporated into the state implementation plan, which expressly requires adherence to a permit issued under the program.

(18) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this administrative regulation, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include emissions which come from a mobile source, (e.g., the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel).

(19) "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than a control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21)(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

(b) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the two (2) year period which precedes the particular date and is representative of normal source operation. The cabinet may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

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~~(e) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.~~

~~(d) For an emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.~~

~~(22) "Complete" means, in reference to an application for a permit, that the application contains the information necessary for processing the application.~~

~~(23) "Significant" means:~~

~~(a) In reference to a net emissions increase or the potential of a source to emit a pollutant listed in Section 22 of this administrative regulation, a rate of emissions that would equal or exceed a rate given in Section 22 of this administrative regulation.~~

~~(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act (42 USC 7401 et seq.), that is not listed in Section 22 of this administrative regulation, any emissions rate.~~

~~(c) Notwithstanding paragraph (b) of this subsection and Section 22 of this administrative regulation, "significant" means an emissions rate or net emissions increase associated with a major stationary source or major modification which is to be constructed within ten (10) kilometers of a Class I area and have an impact on that area equal to or greater than one (1) $\mu\text{g}/\text{m}^3$ (twenty-four (24) hour average).~~

~~(24) "Federal land manager" means, with respect to lands in the United States, the secretary of the department with authority over these lands.~~

~~(25) "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.~~

~~(26) "Low terrain" means an area other than high terrain.~~

~~(27) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case-by-case basis and shall consider the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.~~

~~(28) "Mandatory Class I federal area" means an area identified in 40 CFR 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.~~

~~(29) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.~~

~~(30) "Visibility impairment" means a humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.]~~

Section 2. Applicability. This administrative regulation shall apply to a major stationary source or a major modification which:

(1) Commenced construction after September 22, 1982;

(2) Emits a pollutant regulated by 42 USC 7401 to [through] 7671q (Clean Air Act); and

(3) Is constructed in an area designated as attainment or unclassifiable for a pollutant as defined pursuant to 42 USC 7407(d)(1)(a)(ii) or (iii) (Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act). Area designations are contained in 40 CFR 81.318.

Section 3. Ambient Air Increments. In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the levels specified in Section 23 of this administrative regulation. For a period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 4. Ambient Air Ceilings. No concentration of a pollutant

specified in Section 2 of this administrative regulation shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 5. Area Classifications. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks which exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 CFR 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources which may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 6. Exclusions from Increment Consumption. (1) The cabinet may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 50:035, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources which have been converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from the sources before the effective date of the order;

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the federal statute over the emissions from those sources before the effective date of the plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria specified in subsection (4) of this section.

(2) ~~[No]~~ Exclusion of concentrations shall not apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the plan to which subsection (1)(b) of this section refers, whichever is applicable. If both an order and plan are applicable, no exclusion shall apply more than five (5) years after the later of the two (2) effective dates.

(3) ~~[No exclusion under this section shall occur after May 7, 1981, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.166 has been approved by the U.S. EPA.]~~

(4) For ~~[purposes of]~~ excluding concentrations pursuant to subsection (1)(d) of this section, the SIP ~~[plan]~~ revision ~~[referred to in subsection (3) of this section]~~ shall specify the following provisions:

(a) The time over which the temporary emission increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. The time

period shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) The time period for excluding certain contributions in accordance with paragraph (a) of this subsection is not renewable;

(c) No emissions increase will occur from a stationary source which would:

1. Impact a Class I area or an area where an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations shall be in effect at the end of the time period established in paragraph (a) of this subsection which ensure that the emissions levels from stationary sources affected by the SIP [plan] revision will not exceed those levels occurring from those sources before the [plan] revision was approved.

Section 7. Stack Heights. (1) The degree of emission limitation required for control of an air pollutant under this administrative regulation shall not be affected by:

(a) So much of the stack height of a source as exceeds good engineering practice; or

(b) Another dispersion technique.

(2) Subsection (1) of this section shall not apply to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 8. Review of Major Stationary Sources and Major Modifications; Source Applicability and Exemptions. (1) A [No] major stationary source or major modifications to which Sections 9 to 17 of this administrative regulation apply shall not begin actual construction until it obtains [without] a permit stating [which states] that the stationary source or modification shall [will] comply with Sections 9 to 17 of this administrative regulation.

(2) Sections 9 to 17 of this administrative regulation shall apply to a major stationary source and major modification for each pollutant that it would emit which is subject to regulation under 42 USC 7401 to 7671q ([the] Clean Air Act [42 USC 7401 et seq.]), except as required in Section 2 of this administrative regulation.

(3) Sections 9 to 17 of this administrative regulation shall apply only to a major stationary source or major modification that will be constructed in an area designated as attainment or unclassifiable pursuant to 42 USC 7407(d)(1)(A)(ii) or (iii) (Section 107(d)(1)(A)(ii) or (iii) [407(d)(1)(D) or (E)] of the Clean Air Act [42 USC 7401 et seq.]).

(4) Sections 9 to 17 of this administrative regulation shall not apply to a particular major stationary source or major modification if:

(a) The owner or operator:

1. Obtained the necessary federal, state, and local preconstruction approval effective before September 22, 1982;

2. Commenced construction before September 22, 1982; and

3. Did not discontinue construction for a period of eighteen (18) months or more; or

(b) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at the institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements;

(c) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric, sulfuric, or nitric acid plants;

10. Petroleum refineries;

11. Lime plants;

12. Phosphate rock processing plants;

13. Coke oven batteries;

14. Sulfur recovery plants;

15. Carbon black plants (furnace process);

16. Primary lead smelters;

17. Fuel conversion plants;

18. Sintering plants;

19. Secondary metal production plants;

20. Chemical process plants;

21. Fossil-fuel boilers (or combination of fossil-fuel boilers) totaling more than 250 million BTUs per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or

27. Another stationary source category which, as of August 7, 1980, is being regulated under 42 USC 7411 or 7412 (Section 111 or 112 of the Clean Air Act); [401 KAR Chapters 57 and 59 or 40 CFR Parts 60 and 61]; or

(d) The source or modification is a portable stationary source which has previously received a permit under this administrative regulation; and:

1. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;

2. The emissions from the source would not exceed its allowable emissions;

3. The emissions from the source would not impact a Class I area or an area where an applicable increment is known to be violated; and

4. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) The source or modification was not subject to this administrative regulation with respect to particulate matter requirements in effect before July 31, 1987, and the owner or operator:

1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable state implementation plan before July 31, 1987;

2. Commenced construction within eighteen (18) months after July 31, 1987; and

3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.

(f) The source or modification was subject to this administrative regulation with respect to particulate matter requirements, as in effect before July 31, 1987, and the owner or operator submitted an application for a permit under this administrative regulation before that date, and the cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect in this administrative regulation. If not, the requirements of Sections 9 to 17 of this administrative regulation that were in effect before July 31, 1987, shall apply to the source or modification.

(5) Sections 9 to 17 of this administrative regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, for

that pollutant, the source or modification is located in an area designated as nonattainment pursuant to 42 USC 7407(d)(1)(A)(i) (Section 107(d)(1)(A)(i) [407(d)(1)(A), (B), or (C)] of the Clean Air Act [(42 USC 7401 et seq.)].

(6) Sections 10, 12 and 14 of this administrative regulation shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modifications:

(a) Will not impact a Class I area or an area where an applicable increment is known to be violated; and

(b) Will be temporary.

(7) Sections 10, 12 and 14 of this administrative regulation as they apply to a maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under 42 USC 7401 to 7671g ([the] Clean Air Act [(42 USC 7401 et seq.)], from the modification after the application of best available control technology will be less than fifty (50) tons per year.

(8) The cabinet may exempt a stationary source or modification from the monitoring requirements of Section 12 of this administrative regulation for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will cause air quality impacts in an area which are less than the amounts given in Section 24 of this administrative regulation; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Section 24 of this administrative regulation, or the pollutant is not listed in Section 24 of this administrative regulation.

(9)(a) At the discretion of the cabinet, the requirements for air quality monitoring of PM₁₀ in Section 12 of this administrative regulation may not apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under this section on or before June 1, 1988, and the cabinet subsequently determines that the application as submitted before that date was complete, except for the requirements for monitoring particulate matter specified in Section 12 of this administrative regulation.

(b) The requirements for air quality monitoring of PM₁₀ in Section 12 of this administrative regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under 40 CFR 52.21 or this administrative regulation after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes complete in accordance with Section 12 of this administrative regulation, unless the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that Section 12 of this administrative regulation requires shall have been gathered over that shorter period.

(10) The requirements of Section 10(2) of this administrative regulation shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM₁₀ if the owner or operator of the source or modification submitted an application for a permit under 40 CFR 52.21 or this administrative regulation before the date the provisions embodying the maximum allowable increases for PM₁₀ took effect, and the cabinet subsequently determined that the application as submitted before that date was complete. Instead, the requirements of Section 10(2) shall apply for the maximum allowable increases for TSP as in effect on the day the application was submitted.

(11) The requirements of Section 10(2) of this administrative regulation shall not apply to a stationary source or modification with respect to a maximum allowable increase for nitrogen oxides if the

owner or operator of the source or modification submitted an application for a permit under 40 CFR 52.21 or this administrative regulation before the date on which the provisions embodying the maximum allowable increase took effect, and the cabinet subsequently determined that the application as submitted before that date was complete.

Section 9. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under 401 KAR Chapters 50 to 65 [63], and each applicable emission standard and standard of performance under 40 CFR 60, 61, and 63 [and 64].

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under 42 USC 7401 to 7671g ([the] Clean Air Act [(42 USC 7401 et seq.)], that it will have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under 42 USC 7401 to 7671g (Clean Air Act [(42 USC 7401 et seq.)], for which it will result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant will occur as a result of a physical change or change in the method of operation of the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. The owner or operator of the applicable stationary source may then be required to demonstrate the adequacy of a previous determination of best available control technology for the source.

Section 10. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), will not cause or contribute to air pollution in violation of:

(1) A national ambient air quality standard in an air quality control region; or

(2) An applicable maximum allowable increase over the baseline concentration in an area.

Section 11. Air Quality Models. (1) Estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W ("Guideline on Air Quality Models (Revised)" (1986), Supplement A (1987), Supplement B (1993), and Supplement C (1996)], incorporated by reference in Section 21 of this administrative regulation. [401 KAR 50:040.]

(2) If an air quality model specified in 40 CFR Part 51, Appendix W, [the applicable air quality impact model] is inappropriate, the model may be modified or another model substituted. This change shall be subject to notice and opportunity for public comment under Section 16 of this administrative regulation. Written approval of the U.S. EPA shall be obtained for a modification or substitution. Methods similar to those outlined in the "Workbook for the Comparison of Air Quality Models," specified in 401 KAR 50:040, Section 1(3), shall be used to determine the comparability of air quality models.

Section 12. Air Quality Analysis. (1) Preapplication analysis.

(a) An application for a permit under this administrative regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification will affect for each of the following pollutants:

1. For a source, each pollutant that it will have the potential to emit in a significant amount as defined in Section 1(37) [(23)] of this

administrative regulation;

2. For a modification, each pollutant for which it will result in a significant net emissions increase.

(b) With respect to a pollutant for which no national ambient air quality standard exists, the analysis shall contain the air quality monitoring data the cabinet determines necessary to assess ambient air quality for that pollutant in an area that the emissions of that pollutant will affect.

(c) For pollutants (other than nonmethane hydrocarbons) for which a standard does exist, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant will cause or contribute to a violation of the standard or a maximum allowable increase.

(d) The required continuous air quality monitoring data shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application, except that, if the cabinet determines that a complete and adequate analysis can be accomplished with [the] monitoring data gathered over a period shorter than one (1) year, [but not [to be] less than four (4) months (e.g., with data [will be] obtained during a time period when maximum air quality levels can be expected], the required data shall have been gathered over at least that shorter period.

(e) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51, Appendix S, section IV may provide postapproval monitoring data for ozone in lieu of providing preconstruction data required under paragraphs (a) to (d) of this subsection.

(f) For an application that is complete, except for the requirements of paragraphs (c) and (d) of this subsection pertaining to PM₁₀, after December 1, 1988, and no later than August 1, 1989, the data that paragraph (c) of this subsection requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, unless the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that paragraph (c) of this subsection requires shall have been gathered over that shorter period.

(g) For air quality monitoring of PM₁₀ under Section 8(9)(a) and (b) of this administrative regulation, the owner or operator of the source or modification shall use a monitoring method approved by the cabinet and shall estimate the ambient concentrations of PM₁₀ using the data collected by that approved monitoring method in accordance with estimating procedures approved by the cabinet.

(2) Postconstruction monitoring. The owner or operator of a major stationary source or major modification, after construction of the stationary source or modification, shall conduct the ambient monitoring which the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an area.

(3) Operation of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, Appendix B, [to 40 CFR 58,] which is [has been] incorporated by reference in Section 21 of this administrative regulation [401 KAR 50:016], during the operation of monitoring stations to satisfy subsections (1) and (2) of this section.

Section 13. Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform an analysis or make a determination required under this administrative regulation.

(1) For a major source or major modification to which Sections 9, 11, 13 and 15 of this administrative regulation apply, the information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modifica-

tion;

(c) A detailed description of the system of continuous emission reduction planned for the source or modification, emission estimates, and other information necessary to determine that best available control technology will be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the impact; and

(b) The air quality impacts and the nature and extent of general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification will affect.

Section 14. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator is not required to provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(3) Visibility monitoring. The cabinet may require monitoring of visibility in a Class I area impacted by the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA. The method selected shall be determined on a case-by-case basis by the cabinet. Visibility monitoring required by the cabinet in a Class I area shall be approved by the federal land manager. Data obtained from visibility monitoring shall be made available to the cabinet, U.S. EPA, and the federal land manager, upon request.

Section 15. Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a permit application for a proposed major stationary source or major modification the emissions from which may affect the Class I area. The cabinet shall provide notice promptly after receiving the application. The notice shall include a copy of all information relevant to the permit application and shall be given within thirty (30) days of receipt and at least sixty (60) days prior to the public hearing on the application for a permit to construct. The notice shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I area. The cabinet shall also provide the federal land manager and other federal officials with a copy of the preliminary determination required under Section 16 of this administrative regulation, and shall make available to them the materials used in making that determination, promptly after the cabinet makes it. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advanced notification of the permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of lands located in a Class I area have an affirmative responsibility to protect the air quality related values (including visibility) of the lands and to consider, in consultation with the cabinet, whether a proposed source or modification will have an adverse impact on those values.

(3) Visibility analysis. The cabinet shall consider an analysis performed by the federal land manager, provided within thirty (30) days of the notice and analysis required by subsection (1) of this section, that shows that a proposed new major stationary source or

major modification may have an adverse impact on visibility in a Class I area. If the cabinet finds that analysis does not demonstrate to the satisfaction of the cabinet that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 50:035, Section 4, either explain that decision or give notice as to where the explanation can be explained.

(4) Denial; impact on air quality related values. The federal land manager of lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from the proposed source or modification will not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area as defined in Section 23 of this administrative regulation. If the cabinet concurs with the demonstration then the cabinet shall not issue the permit.

(5) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the source or modification will have no adverse impact on the air quality related values of lands located in a Class I area (including visibility), notwithstanding that the change in air quality resulting from emissions from the source or modification will cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with the demonstration and he so certifies, the cabinet may, if the other applicable requirements of this administrative regulation are met, issue the permit with the emission limitations that are necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides will not exceed the maximum allowable increases over minor source baseline concentration for the pollutants specified in Section 25 of this administrative regulation.

(6) Sulfur dioxide variance by governor with federal land manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the Governor of the Commonwealth of Kentucky that a variance under this clause will not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if applicable) and subject to his concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase. If a variance is granted, the cabinet shall issue a permit to the source or modification under the requirements of subsection (8) of this section, if the other applicable requirements of this administrative regulation are met.

(7) Variance by the governor with the President's concurrence. If the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America. If the variance is approved by the President, the cabinet shall issue a permit pursuant to the requirements of subsection (8) of this section, if the other applicable requirements of this administrative regulation are met.

(8) Emission limitations for presidential or gubernatorial variance. For a permit issued pursuant to subsections (6) or (7) of this section the source or modification shall comply with those emission limitations necessary to assure that emissions of sulfur dioxide from the source or modification will not (during a day on which the other applicable maximum allowable increases are exceeded) cause or contribute to concentrations which will exceed the maximum allowable increases over the baseline concentration as specified in Section 26 of this administrative regulation and to assure that the emissions will not cause or contribute to concentrations which exceed the other applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18)

days, not necessarily consecutive, during an annual period.

Section 16. Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 50:035 and 40 CFR 51.166(g) in processing applications under this administrative regulation.

Section 17. Source Obligation. (1) An owner or operator who constructs or operates a source or modification not in accordance with the application submitted to the cabinet under this administrative regulation or under the terms of an approval to construct; or an owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982 without applying for and receiving approval, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of the approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project; each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with 401 KAR Chapters 50 to 63, and other requirements of local, state, or federal law.

(4) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then Sections 9 to 18 of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 18. Environmental Impact Statements. If a proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to 42 USC 4321 to 4370d (the National Environmental Policy Act), [42 USC 4321,] review by the cabinet conducted pursuant to this administrative regulation shall be coordinated with the broad environmental reviews under that Act and under 42 USC 7609 (Section 309 of the Clean Air Act [42 USC 7401 et seq.]), to the maximum extent feasible and reasonable.

Section 19. Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may request the cabinet in writing to approve a system of innovative control technology.

(2) The cabinet shall, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 9(2) of this administrative regulation by a date specified by the cabinet. The date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance.

(c) The source or modification will meet Sections 9 and 10 of this administrative regulation based on the emissions rate that the stationary source employing the system of innovative control technology will be required to meet on the date specified by the cabinet;

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(d) The source or modification will not before the date specified by the cabinet:

1. Cause or contribute to a violation of an applicable national ambient air quality standard; or

2. Impact an area where an applicable increment is known to be violated;

(e) Section 15 of this administrative regulation (relating to Class I areas) has been satisfied for all periods during the life of the source or modification; and

(f) All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw approval to employ a system of innovative control technology if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The cabinet decides that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

Section 20. Permit Condition Rescission. (1)(a) An owner or operator holding a permit for a stationary source or modification which contains conditions pursuant to 401 KAR 51:015 or 401 KAR 51:016E may request that the cabinet rescind the applicable conditions.

(b) An owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under this administrative regulation as in effect on July 30, 1987, or an earlier version of this administrative regulation, may request that the cabinet rescind the permit or a particular portion of the permit.

(2) The cabinet shall rescind a permit condition if requested and if the applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification.

Section 21. Reference Material. (1) Incorporation by Reference. The following documents are [is] incorporated by reference:

(a)1. [the] Standard Industrial Classification Manual, 1987, published by the Office of Management and Budget. [available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161, Order No. PB 87-100012-]

2. The manual is available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161; Phone (703) 487-4650.

(b)1. Documents from the Code of Federal Regulations:

a. 40 CFR Part 51, Appendix W: Guideline on Air Quality Models (Revised), (July, 1986), with Supplement A (July, 1987), Supplement B (July, 1993), and Supplement C (August, 1995), as published in the Code of Federal Regulations, July 1, 1995, and as amended by 60 FR 40465 (August 9, 1995).

b. 40 CFR Part 58, Appendix B: Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring, as published in the Code of Federal Regulations, July 1, 1995, and as amended by 60 FR 52315 (October 6, 1995).

2. Copies of the Code of Federal Regulations and the Federal Register may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Attn.: New Orders, P.O. Box 371954, Pittsburgh PA 15250-7954; Phone (202) 512-1800; FAX (202) 512-2250.

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

(a) Kentucky Division for Air Quality, 803 Schenkel Lane [316 St. Clair Mall], Frankfort, Kentucky 40601-1403, (502) 573-3382 [564-3382];

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105-1507 [41104], (606) 920-2067 [325-8669];

(c) Bowling Green Regional Office, 1508 Western Avenue, Bowling Green, Kentucky 42104, (502) 746-7475 [843-5475];

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

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022 [439-2394];

(f) London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700 [311 West Second Street], Owensboro, Kentucky 42303 [42304], (502) 687-7304 [686-3304]; and

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

Section 22. Significant Net Emissions Rates.

| POLLUTANT | EMISSIONS RATE |
|--|--|
| Carbon monoxide | 100 tons per year (tpy) |
| Nitrogen oxides | 40 tpy |
| Sulfur dioxide | 40 tpy |
| Particulate matter | 25 tpy of particulate matter emissions 15 tpy of PM ₁₀ emissions |
| Ozone | 40 tpy of volatile organic compounds |
| Lead | 0.6 tpy |
| Asbestos | 0.007 tpy |
| Beryllium | 0.0004 tpy |
| Mercury | 0.1 tpy |
| Vinyl chloride | 1 tpy |
| Fluorides | 3 tpy |
| Sulfuric acid mist | 7 tpy |
| Hydrogen sulfide (H ₂ S) | 10 tpy |
| Total reduced sulfur (including H ₂ S) | 10 tpy |
| Reduced sulfur compounds (including H ₂ S) | 10 tpy |
| Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans) | 3.2 x 10 ⁻⁶ megagrams per year (Mg/y) (3.5 x 10 ⁻⁶ tpy) |
| Municipal waste combustor metals (measured as particulate matter) | 14 Mg/y (15 tpy) |
| Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride) | 36 Mg/y (40 tpy) |
| Municipal solid waste landfill emissions (measured as nonmethane organic compounds) | 45 Mg/y (50 tpy) |

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Section 23. Ambient Air Increments.

| Pollutant | Maximum Allowable Increase (Micrograms per cubic meter) |
|-----------|--|
|-----------|--|

Class I

Particulate Matter:

| | |
|--|-----------|
| <u>PM₁₀, annual arithmetic mean</u> | <u>4</u> |
| <u>PM₁₀, 24-hour maximum</u> | <u>8</u> |
| <u>TSP, Annual geometric mean</u> | <u>5</u> |
| <u>TSP, 24-hour maximum</u> | <u>10</u> |

Sulfur Dioxide:

| | |
|------------------------|----|
| Annual arithmetic mean | 2 |
| 24-hour maximum | 5 |
| 3-hour maximum | 25 |

Nitrogen Dioxide:

| | |
|------------------------|-----|
| Annual arithmetic mean | 2.5 |
|------------------------|-----|

Class II

Particulate Matter:

| | |
|--|-----------|
| <u>PM₁₀, annual arithmetic mean</u> | <u>17</u> |
| <u>PM₁₀, 24-hour maximum</u> | <u>30</u> |
| <u>TSP, Annual geometric mean</u> | <u>19</u> |
| <u>TSP, 24-hour maximum</u> | <u>37</u> |

Sulfur Dioxide:

| | |
|------------------------|-----|
| Annual arithmetic mean | 20 |
| 24-hour maximum | 91 |
| 3-hour maximum | 512 |

Nitrogen Dioxide:

| | |
|------------------------|----|
| Annual arithmetic mean | 25 |
|------------------------|----|

Section 24. Significant Air Quality Impact.

| Pollutant | Air Quality Level | Averaging Time |
|--------------------------|--|----------------------------|
| Carbon monoxide | 575 ug/m ³ | 8-hour average |
| Nitrogen dioxide | 14 ug/m ³ | annual average |
| Particulate matter | 10 ug/m³ of TSP | 24-hour average |
| | 10 ug/m ³ of PM ₁₀ | 24-hour average |
| Sulfur dioxide | 13 ug/m ³ | 24-hour average |
| Ozone | No de minimis air quality level is provided for ozone. However, a net increase of 100 tons per year or more of volatile organic compounds subject to this administrative regulation is required to perform an ambient impact analysis including the gathering of ambient air quality data. | |
| Lead | 0.1 ug/m ³ | 3-month average |
| Mercury | 0.25 ug/m ³ | 24-hour average |
| Beryllium | 0.001 ug/m ³ | 24-hour average |
| Fluorides | 0.25 ug/m ³ | 24-hour average |
| Vinyl chloride | 15 ug/m ³ | 24-hour average |
| Hydrogen sulfide | 0.2 ug/m ³ | 1-hour average |
| Total reduced sulfur | 10 ug/m ³ | 1-hour average |
| Reduced sulfur compounds | 10 ug/m ³ | 1-hour average |

Section 25. Ambient Air Increments for Class I Variances.

| Particulate Matter: | Maximum Allowable Increase (micrograms per cubic meter) |
|--|---|
| <u>PM₁₀, annual arithmetic mean</u> | <u>17</u> |

| | |
|---|-----------|
| <u>PM₁₀, 24-hour maximum</u> | <u>30</u> |
| <u>TSP, Annual geometric mean</u> | <u>19</u> |
| <u>TSP, 24-hour maximum</u> | <u>37</u> |
| Sulfur Dioxide: | |
| Annual arithmetic mean | 20 |
| 24-hour maximum | 91 |
| 3-hour maximum | 325 |
| Nitrogen Dioxide: | |
| Annual arithmetic mean | 25 |

Section 26. Ambient Air Increments for Presidential or Gubernatorial SO₂ Variances.

| Period of Exposure | Maximum Allowable Increase (Micrograms per cubic meter) | |
|--------------------|--|------|
| | Low | High |
| 24-hour maximum | 36 | 62 |
| 3-hour maximum | 130 | 221 |

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: October 11, 1996

FILED WITH LRC: October 14, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed administrative regulation will be conducted on November 22, 1996, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five working days prior to the hearing, Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet 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.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This regulation provides for the prevention of significant deterioration of ambient air quality. It applies to major stationary sources and major modifications constructing in areas that are designated as attainment or unclassified for the specified pollutants. It is being amended to incorporate recent amendments to the federal Prevention of Significant Deterioration (PSD) regulation. This amendment relates to revisions to the "Guideline on Air Quality Models" document in the federal PSD rules, as promulgated in the Federal Register July 20, 1993 (58 FR 38816) and August 9, 1995 (60 FR 40465); to the PSD allowable increases (increments) for particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM-10), as promulgated in the Federal Register June 3, 1993 (58 FR 31622); and to exclusion for pollution control projects undertaken at electric utility units, as promulgated in the Federal Register July 21, 1992 (57 FR 32314). Most of the proposed changes to this administrative regulation are being made in order to bring the state PSD regulation into conformance with the corresponding federal regulatory revisions; however, additional text changes have been made so that this regulation will conform with the requirements of KRS Chapter 13A.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in

ADMINISTRATIVE REGISTER - 2217

which the administrative regulation will be implemented. There are no costs or savings or beyond those which are described in the proposed and final federal rulemakings. If Kentucky does not make the federally required amendments to this regulation, the U.S. EPA will enforce the requirements of the federal regulations in Kentucky. There are no additional costs associated with complying with the state's regulation over complying with the same requirements in the federal regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see discussion in (2)(a) above.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no compliance, reporting, or paperwork requirements in this amendment beyond those which are required in the federal regulation.

2. Second and subsequent years: Please see discussion in (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: The amendment to this administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country that are subject to 40 CFR 51.166 are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal regulation, 40 CFR 51.166.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state because it would be enforced by the U.S. EPA if it is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: Please see discussion in (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are

no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises Kentucky's PSD regulation to be compatible with the federal PSD regulation. There is no additional tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The amendments to this administrative regulation are the same as those made by the U.S. EPA to its PSD regulation for the requirements of State Implementation Plans, 40 CFR 51. These amendments were promulgated in the Federal Register July 20, 1993 (58 FR 38816) and August 9, 1995 (60 FR 40465); June 3, 1993 (58 FR 31622); and July 21, 1992 (57 FR 32314). Some minor language changes have also been made to this administrative regulation so that it will conform with the requirements of KRS Chapter 13A.

2. State compliance standards. The state compliance standards are identical to those promulgated by the U.S. EPA.

3. Minimum or uniform standards contained in the federal mandate. The state compliance standards are identical to those promulgated by the U.S. EPA.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The proposed amendment to this administrative regulation does not impose stricter standards, or additional or different responsibilities or requirements.

ADMINISTRATIVE REGISTER - 2218

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:050. Definitions.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-120 and 224.60-130 require the Office of the Petroleum Storage Tank Environmental Assurance Fund ~~[Commission]~~ to adopt administrative regulations to establish the policy guidelines and procedures to administer the Petroleum Storage Tank Environmental Assurance Fund. This administrative regulation defines essential terms used in connection with the administrative regulations ~~[of the commission]~~ in this chapter. ~~[1992 Kentucky Acts Chapter 450 amended the statutory provisions for the fund.]~~

Section 1. Definitions. (1) "Abandoned" means a prior owner, of the tank, has relinquished all connections with or concern in ownership with no intention to return or claim again and that the current owner seeking assistance from the fund acquired the property where the tank is located without knowledge of the tank's existence. Physical acts by the owner or operator, such as applying for assistance, will be considered in determining the applicants knowledge of the tank's existence.

(2) "Assets" shall have the meaning in KRS 224.60-120(3);

(3) "Bodily injury and property damage" shall have the meaning in KRS 224.60-115;

(4) "Cabinet" shall have the same meaning as in KRS 224.60-115(2);

(5) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrical chemical cell;

(6) "Claim" shall have the meaning in KRS 224.60-115(4);

(7) "Closed" means a tank which ceased to operate prior to December 22, 1988;

(8) ~~["Commission" means the Petroleum Storage Tank Environmental Assurance Fund Commission;~~

~~(9) "Contract" means the legally binding, written agreement for performance of corrective action entered into by an owner or operator and a contractor certified pursuant to 415 KAR 1:114;~~

~~(9) [(49)] "Corrective action" shall have the meaning in KRS 224.60-115(5);~~

~~(10) [(44)] "Corrective action plan" means a remediation proposal employing corrective action technologies to obtain site closure, as required, in writing, by the cabinet;~~

~~(11) [(42)] "Corrosion protection" means a method of corrosion protection that complies with the requirements of 401 KAR 42:030;~~

~~(12) [(43)] "Currently exist" means an existing petroleum storage tank that has or does contain petroleum, and includes a petroleum storage tank that has been permanently closed by filling with an inert solid material;~~

~~(13) [(44)] "Currently in use" means a petroleum storage tank which contains petroleum or petroleum products and is in use for commercial purposes, storage of petroleum, or is in compliance when temporarily closed under the requirements of cabinet administrative regulations;~~

~~(14) [(45)] "Drinking water supply" means a groundwater source or a surface water source of a private water supply, a public water system, or a semipublic water system as defined in 401 KAR 8:010;~~

~~(15) [(46)] "Eligibility" means compliance with the criteria for eligibility established in this chapter;~~

~~(16) [(47)] "Entry level" means the amount of financial responsibility determined by the Office of the Petroleum Storage Tank Environ-~~

mental Assurance Fund ~~[commission]~~ to be paid by the owner or operator of a petroleum storage tank prior to being eligible for participation in the fund;

~~(17) [(48)] "Extent of environmental harm" means the extent of horizontal and vertical contamination due to a release from a petroleum storage tank, including contamination of a surface or underground drinking water supply, the potential for exposure posing a threat to human health or the environment, and the amount of contamination released;~~

~~(18) [(49)] "Facility" shall have the meaning in KRS 224.60-115(7);~~

~~(19) [(20)] "Federal regulation" shall have the meaning in KRS 224.60-115(8);~~

~~(20) [(21)] "Financial ability" means the ability of a petroleum storage tank owner or operator to pay the entry level to the fund based upon a consideration of the assets and income of the owner or operator;~~

~~(21) "Fund" means the Office of the Petroleum Storage Tank Environmental Assurance Fund.~~

~~(22) "Guarantor" shall have the meaning in KRS 224.120(4);~~

~~(23) "Maintenance" means the normal operational upkeep to prevent a petroleum storage tank system from releasing petroleum or petroleum products;~~

~~(24) "Maximum contaminant level" means the maximum permissible level of a contaminant in water established pursuant to the regulations of the cabinet or applicable federal regulations;~~

~~(25) "Motor fuel" shall have the meaning in KRS 224.60-115(12).~~

~~(26) "Net worth" shall have the meaning in KRS 224.60-120(3);~~

~~(27) [(26)] "Newly discovered tanks" mean petroleum storage tanks at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence;~~

~~(28) [(27)] "Occurrence" shall have the meaning in KRS 224.115(13) [(42)];~~

~~(29) [(28)] "Operation" with respect to a UST or UST system means a UST or UST system currently being used for the storage and dispensing of petroleum or petroleum products;~~

~~(30) [(29)] "Original invoice" means the original or a duplicate original of an invoice;~~

~~(31) [(30)] "Permanently closed" means a UST or UST system that was closed after December 22, 1988 pursuant to the requirements of cabinet administrative regulations;~~

~~(32) [(31)] "Petroleum storage tank" shall have the meaning in KRS 224.60-115(16) [(45)];~~

~~(33) [(32)] "Petroleum storage tank operator" or "operator" shall have the meaning in KRS 224.60-115(17) [(46)];~~

~~(34) [(33)] "Petroleum storage tank owner" or "owner" shall have the meaning in KRS 224.60-115(18) [(47)];~~

~~(35) [(34)] "Ranking system" means the system for determining financial ability and extent of environmental harm established by these administrative regulations;~~

~~(36) [(35)] "Release" shall have the meaning in KRS 224.60-115(20) [(49)];~~

~~(37) [(36)] "Release detection" means a method of determining whether a release of petroleum has occurred from a petroleum storage tank system into the environment or into the interstitial space between the petroleum storage tank system and a secondary barrier or secondary containment around it that complies with the requirements of 401 KAR 42:040;~~

~~(38) [(37)] "Retail facility" means a facility that sells petroleum products to the general public from petroleum storage tanks;~~

~~(39) [(38)] "Repair" means to restore a petroleum storage tank or system component that has caused a release of petroleum to comply with the administrative regulations of the cabinet;~~

~~(40) "Secretary" means the Secretary of the Public Protection and Regulation Cabinet.~~

~~(41) [(39)] "Statistically significant increase" means that use of a statistical procedure approved by the cabinet demonstrates that a~~

level of a petroleum constituent in a drinking water supply significantly exceeds background;

(42) [(40)] "Temporary closure" means taking a UST or UST system out of operation pursuant to the requirements of 401 KAR 42:070;

(43) "Third party" shall have the meaning in KRS 224.60-115(22);

(44) [(41)] "Upgrade" means the addition or retrofit of some system such as cathodic protection, lining, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product, or the replacement of tanks with new tanks.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 19, 1996, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: The tank owners or operators are financially responsible for \$1,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund is required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) House Bill 167, amending KRS 224.60-115, required the addition of these definitions. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the addition of definitions to this section.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains definitions for terms used in 415 KAR Chapter 1.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: the effect of this regulation is to provide definition for programs that provide reimbursement up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The amended definitions were required by HB 167.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. This regulation is definitional in nature so tiering was not necessary.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

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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. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:060. Financial responsibility account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the Office of the Petroleum Storage Tank Environmental Assurance Fund [commission] to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by state and federal administrative regulations for the payment of the costs of corrective action and third-party liability. This administrative regulation establishes the eligibility requirements for the financial responsibility account, and establishes the procedure for eligible storage tank owners and operators to receive a certification of eligibility for this account.

Section 1. Applicability. An owner or operator of a facility with petroleum storage tanks containing motor fuels in operation meeting the following requirements shall be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by the fund [commission], pursuant to 415 KAR 1:020 (1991)[, 415 KAR 1:060 (1992)] or 415 KAR 1:060 (1993), prior to the effective date of this administrative regulation may be eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2) of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certificate of eligibility prior to the effective date of this administrative regulation shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040, or be permanently closed in compliance with 401 KAR 42:070 or temporarily closed in compliance with 401 KAR 42:070;

(c) Not have a release for which corrective action is required at

the time of certification;

(d) Have corrosion protection as required by 401 KAR 42:030;

(e) Have paid all annual fees required to be paid pursuant to KRS 224.60-150;

(f) Have tanks "in operation" on or after the compliance dates set forth in 401 KAR 42:090 and be mandated by 401 KAR 42:090 to demonstrate financial responsibility as specified under 401 KAR 42:090; and

(g) Have demonstrated financial responsibility, as required, in the amount of entry level to the fund established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator may be eligible for payment from the financial responsibility account if:

(a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation; and

(b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; and

(c) The owner or operator has a release into the environment from a petroleum storage tank that requires corrective action. The necessity for corrective action shall be established by analytical sample results. If closure can be issued by the cabinet without the performance of corrective action, the facility is not eligible for fund participation.

(d) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991)[, 415 KAR 1:060 (1992)] or 415 KAR 1:060 (1993) may be eligible for payment of costs of corrective action and third-party liability [~~for bodily injury or property damage~~] incurred on or after April 9, 1990 upon reissuance of a certificate of eligibility pursuant to this administrative regulation. An owner or operator performing ongoing corrective action and participating in the financial responsibility account under a previously issued certificate of eligibility shall not be denied a certificate of eligibility, pursuant to this administrative regulation, if the requirements of Sections 1(2)(a), (b), (d), (e), (f), (g) and 5 of this administrative regulation are met;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation may be eligible for payment of costs of corrective action and third-party liability [~~for bodily injury or property damage~~] incurred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the Office of the Petroleum Storage Tank Environmental Assurance Fund [commission] a completed [~~copy of the~~] Eligibility and State Financial Responsibility Affidavit form dated June 1996 [~~July 1994~~] hereby incorporated by reference. Copies of this form may be obtained and inspected at the Office of the Petroleum Storage Tank Environmental Assurance Fund [Commission], 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund [commission] are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the fund [commission].

(3) A certificate of eligibility is valid after the transfer of the covered facility, provided the new owner of the facility submits to the fund a completed Eligibility and State Financial Responsibility Affidavit form for that facility within sixty (60) days of the transfer of the facility. The certificate of eligibility shall be valid until a final decision is issued

by the fund on the new certificate of eligibility, unless the new owner fails to submit a complete Eligibility and State Financial Responsibility Affidavit in accordance with this section.

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400. For the purpose of potential eligibility for participation in the financial responsibility account, in no event shall the report of the release be made to the cabinet more than seven (7) days after discovery; and

(2) Implement initial abatement procedures required by 401 KAR 42:060 within twenty (20) days after detection of the release, or as directed in writing by the cabinet; and

(3) Comply with the requirements of 401 KAR 42:060 as directed in writing by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at \$1,000 per occurrence for taking corrective action and compensating third parties for bodily injury and property damage.

(2) The entry level for participation in the financial responsibility account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$5,000 per occurrence for taking corrective action and \$5,000 per occurrence for compensating third parties for bodily injury and property damage.

(3) The entry level for participation in the financial responsibility account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$25,000 per occurrence for taking corrective action and \$25,000 per occurrence for compensating third parties for bodily injury and property damage.

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or any combination of the options listed in subsection (2) of this section. This certification shall be provided to the fund [commission] on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level may be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the fund [commission];

(c) A guarantor with a controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the fund [commission] in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from

owning or operating petroleum storage tanks; and

(f) Qualification as a self-insurer with prior approval of the fund [commission] if the owner or operator has certified to the fund [commission] the following:

1. The owner or operators' annual year-end financial statements; and

2. The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.

Section 8. Change of Eligibility. An owner or operator shall report any change in the eligibility requirements contained in this administrative regulation to the fund [commission] within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If at any time, prior to a release, the fund [commission] determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the fund [commission] shall notify the owner or operator of the noncompliance.

(2)(a) A facility shall be deemed ineligible to receive payment from the financial responsibility account under a certificate of eligibility issued pursuant to this administrative regulation, if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation and a release occurs during the period of noncompliance.

(b) ~~[(a)]~~ An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the ~~[actions necessary to bring the]~~ facility is brought into compliance with cabinet administrative regulations. The owner or operator shall not be eligible for payment of the costs of third party liability. The owner or operator will be responsible for the payment of the entry level, notwithstanding 415 KAR 1:070(5), (4).

~~[(b) If the commission places the facility in the petroleum storage tank account then the commission shall deny eligibility of reimbursable remediation costs in the following amounts:~~

~~1. Failure to maintain compliance with release detection as required by 401 KAR 42:040, five (5) percent of their average adjusted gross income not to exceed \$25,000;~~

~~2. If a final determination is made by the cabinet that the facility has failed to report a release as required by KRS 224.01-400, five (5) percent of their average gross income for the past five (5) years not to exceed \$25,000;~~

~~3. If a final determination is made by the cabinet that the facility failed to comply with cabinet direction for corrective action as required by 401 KAR 42:060, five (5) percent of their average adjusted gross income for the past five (5) years not to exceed \$25,000;~~

~~4. The owner or operator shall not be eligible for payment of the costs of third party liability.]~~

(3)(a) A facility shall be deemed ineligible to receive payment from the financial responsibility account, pursuant to a previously approved Application for Assistance [agreement] or a certificate of eligibility issued pursuant to this administrative regulation, if the owner or operator failed to maintain compliance with the eligibility require-

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ments of this administrative regulation during the ongoing corrective action and a release occurs during the period of noncompliance.

(b) ~~{(a)}~~ An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the facility is brought into compliance with cabinet administrative regulations. The owner or operator shall not be eligible for payment of the costs of third party liability.

~~[(b) If the commission places the facility in the petroleum storage tank account then the commission shall deny eligibility of a percentage of the reimbursable remediation costs in the following amounts:~~

~~1. Failure to maintain compliance with release detection as required by 401 KAR 42:040, ten (10) percent;~~

~~2. If a final determination is made by the cabinet that the facility has failed to report a release as required by KRS 224.01-400, ten (10) percent;~~

~~3. If a final determination is made by the cabinet that the facility failed to comply with cabinet direction for corrective action as required by 401 KAR 42:060, ten (10) percent;~~

~~4. The owner or operator shall not be eligible for payment of the costs of third party liability.]~~

(4) An owner or operator may be determined ineligible to receive payment from the financial responsibility account if the owner or operator has intentionally submitted false or inaccurate information to the fund ~~{commission}~~, and shall be required to repay any monies falsely received.

(5) The fund ~~{commission}~~ shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the fund ~~{commission}~~; or

(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the fund ~~{commission}~~ by fraud or intentional misrepresentation.

(6) An owner or operator issued or reissued a certificate of eligibility for the financial responsibility account pursuant to this administrative regulation may be eligible to participate in the petroleum storage tank account.

(7) Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than \$1,500,000 to ensure a \$1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a \$500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. When funds are withdrawn for emergency abatement actions by the cabinet, the fund ~~{commission}~~ shall replace the amount immediately.

(2) If the unobligated balance of the financial responsibility account is \$1,500,000, or less, or the obligation of a claim shall cause the unobligated balance of the fund to be less than \$1,500,000, the fund ~~{commission}~~ shall immediately suspend the obligation of claims until the unobligated balance is greater than \$1,500,000. Obligations submitted for approval by the fund ~~{commission}~~ at the time of suspension shall be obligated in accordance with the date of initial submission of the obligation when the suspension is lifted.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their

intent to attend by November 19, 1996, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing motor fuels.

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

1. First year: The tank owners or operators are financially responsible for \$1,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with a certification of financial assistance that satisfies federal requirements.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 167, amending KRS 224.60-115, required these amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the amending of this section.

Alternatives:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains the eligibility requirements for this fund account which provides for reimbursement to facilities that are required by 40 CFR 280 Subpart H to demonstrate financial responsibility for corrective action and third party compensation resulting from petroleum contamination. The

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proposed amended regulation meets the requirements of 40 CFR 280 Subpart H. The amendments will allow for a more efficient administration of the account, which will result in increased reimbursement to the public and less waste.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The amendments should speed the process of determining fund obligation and save public money.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the technical compliance level, the level of financial responsibility required, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

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. This regulation will affect a local government or a division of local

government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates a underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:070. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the fund [commission] to establish a petroleum storage tank account within the fund which may be used to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.

Section 1. Applicability. (1)(a) This administrative regulation does not apply to releases from petroleum storage tanks removed from the ground before January 1, 1974;

(b) Costs of corrective action for releases of motor fuel from petroleum storage tanks removed from the ground after January 1, 1974 or tanks closed in place may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) Costs of corrective action for releases of motor fuel from petroleum storage tanks currently existing and [temporarily] closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 of this administrative regulation are met; and

(d) Costs of corrective action for releases of motor fuel from petroleum storage tanks currently in use which are not eligible for participation in the financial responsibility account may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility the owner or operator shall have:

(a) Registered the tanks at the facility with the cabinet as required by KRS 224.60-105;

(b) Paid all annual fees as required by KRS 224.60-150;

(c) Submitted a completed [the] Eligibility and State Financial Responsibility Affidavit form to the fund [commission] to certify eligibility for the petroleum storage tank account;

(d) Filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirement of 401 KAR 42:020; and

(e) Confirmed by analytical sample results the need for corrective action at the facility. If closure can be issued by the cabinet without the performance of corrective action, the facility is not eligible for fund participation.

(3) Payment from the petroleum storage tank account shall only

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be made for the costs of corrective action required by law and shall not be made for costs to upgrade the facility.

Section 2. Eligibility Requirements for the Classes of Tanks Described in Section 1(1)(b) of this Administrative Regulation. An owner or operator of a facility of the class described in Section 1(1)(b) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

- (1)(a) A release of motor fuel ~~[petroleum]~~ is detected at the facility after April 9, 1990; or
- (b) Corrective action costs associated with a release are incurred after April 9, 1990;
- (2) The release has been reported to the cabinet; and
- (3) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)(c) of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)(c) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

- (a) 1. A release of motor fuel ~~[petroleum]~~ is detected at the facility after April 9, 1990; or
 2. Corrective action costs associated with a release are incurred after April 9, 1990;
 - (b) The release has been reported to the cabinet;
 - (c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed in writing by the cabinet; and
 - (d) The owner or operator has filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change in service to comply with the requirements of 401 KAR 42:020.
- (2) If the owner or operator elects to upgrade the facility, the petroleum storage tanks at the facility shall not be used to store a regulated substance until the upgrade is completed.

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)(d) of this Administrative Regulation. An owner or operator of a facility currently in use which is not in compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070, and 401 KAR 42:090 may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

- (1)(a) A release of motor fuel ~~[petroleum]~~ is detected at the facility after April 9, 1990; or
- (b) Corrective action costs associated with a release are incurred after April 9, 1990;
- (2) The release has been reported to the cabinet;
- (3) The owner or operator is taking the actions necessary to bring the facility into compliance with applicable administrative regulations of the cabinet; and
- (4) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:060 and 42:070, or as directed in writing by the cabinet.

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1) The entry level for participation in the petroleum storage tank account for an owner or operator of five (5) or less tanks shall be established and maintained at \$1,000 per occurrence for taking corrective action.

(2) The entry level for participation in the petroleum storage tank account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$5,000 per occurrence for taking

corrective action.

(3) The entry level for participation in the petroleum storage tank account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$25,000 per occurrence for taking corrective action.

(4) An owner or operator of a facility of the class described in Section 1(1)(b) or ~~and~~ (c) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is taken permanently out of service.

(5) The entry level payments contained in subsections (1), (2) and (3) of this section shall apply retroactively to any facility involved in corrective action that had not been issued a closure letter by the cabinet prior to July 14, 1994.

Section 6. Ineligibility. (1)(a) The fund ~~[commission]~~ may determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for which a claim is made.

~~(b) If the commission makes a determination that a facility should be ineligible for participation in the petroleum storage tank account the commission shall disallow twenty (20) percent of the total allowable reimbursable remediation costs if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42.~~

~~(c) The owner or operator of a facility placed in the petroleum storage tank account [by the commission] pursuant to 415 KAR 1:060, Section 10(2) shall be denied eligibility for reimbursement as delineated in 415 KAR 1:060, Section 10(2)(a) and (b) [and (c)].~~

(2) An owner, operator with an approved Application for Assistance ~~[agreement]~~ may be determined ineligible to receive payment from the petroleum storage tank account if the owner or operator has submitted false or inaccurate information to the fund ~~[commission]~~, and shall be required to repay any monies falsely received.

(3) The fund ~~[commission]~~ shall have the right to recover the money paid to an owner or operator, or a contractor when:

- (a) The amount was paid due to an error of the fund ~~[commission]~~; or
- (b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or
- (c) A person has obtained payment ~~[from the commission]~~ by fraud or intentional misrepresentation.

Section 7. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 8. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 9. Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

(2) Costs of corrective action incurred at a facility on or after April 9, 1990 may be payable from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

(3) Costs incurred at a facility for site [sight] investigation or corrective action at the written direction of the cabinet may be payable from the petroleum storage tank account if contamination requiring corrective action is substantiated by analytical sample results and the eligibility requirements of this regulation are met.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 19, 1996, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: The tank owners or operators are financially responsible for \$1,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 167, amending KRS 224.60-115, required these amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the amending of this section.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains the eligibility requirements for this fund account. The account provides for reimbursement to facilities that are not eligible for reimbursement from the Financial Responsibility Account due to noncompliance with the applicable state and federal regulations pertaining to underground petroleum storage tanks. The amendments will allow for a more efficient administration of the account.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and statutory changes and avoids confusion in the regulated public. The amendments should speed the process of determining fund placement and obligation.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

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. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank that are out of compliance or exempt from the requirements of 40 CFR 280 Subpart H, may be eligible for reimbursement of corrective action cost from this fund account. Excepting the required entry level imposed on the local government, extensive savings will be realized by the local government.

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank
Environmental Assurance Fund
(Amendment)

415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund [commission] to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the fund [commission] for reimbursement or payment of the costs of corrective action.

Section 1. Application for Assistance [Agreement]. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account shall apply for ~~[an]~~ assistance ~~[agreement]~~ with the fund [commission].

(2) Application shall be made on the Application for Assistance [Agreement] form dated June 1996 [October 1992], hereby incorporated by reference. This form may be inspected and obtained at the Office of Petroleum Storage Tank Environmental Assurance Fund [Commission], 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund [commission] are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met; and

(b) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet. The necessity for corrective action shall be demonstrated by analytical sample results. If closure can be issued by the cabinet without the performance of corrective action, the facility is not eligible for fund participation.

(3)(a) If the owner or operator meets the requirements of

subsection (2) of this section the fund [commission] may approve the Application for [enter into an] Assistance [agreement] and establish the amount to be obligated by the appropriate account ~~[based upon the approved contract]~~.

(b) ~~(a)~~ Reimbursement pursuant to an approved Application for Assistance [agreement] is restricted to documented costs approved by the secretary [commission].

(c) ~~(b)~~ The approved Application for Assistance [agreement] may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount obligated and approved by the fund [commission].

(4) The fund [commission] may amend the approved Application for Assistance [agreement] upon application by the eligible owner or operator, upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action and that the additional costs are necessary to comply with the written directions and administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the fund [commission].

(5) Payment under the terms of the approved Application for Assistance [agreement] may be made when the eligible owner or operator submits a claim form, and a certification ~~[by the certified contractor]~~ that the costs were consistent with the bid and necessary to comply with the administrative regulations of the cabinet at 401 KAR Chapter 42. The requirement for the use of a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114 (1994).

(6) The fund may request additional information and documentation from the applicant to verify eligibility or account placement. Failure by the applicant to provide the requested information and documentation within sixty (60) days of the receipt of the request shall cause the application to be denied. The fund may grant an extension of thirty (30) days for good cause demonstrated by the applicant. Denial of the Application for Assistance under this subsection shall not prevent the owner or operator from reapplying once the requested information becomes available.

Section 2. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the fund shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the Claim form and Listing of Invoices form [established by the commission] dated June 1996 [October 1992], hereby incorporated by reference. These [This] forms may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund [Commission], 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund [commission] are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The claim shall contain:

(a) Original invoices for all costs for which payment is sought;

(b) A copy of the contract executed by the owner or operator and the person contracting to perform the corrective action;

(c) Documentation that the release has been reported to the cabinet; and

(d) Laboratory analysis substantiating the necessity of the corrective action to be or having been performed except for initial abatement and free product recovery as required by 401 KAR 42:060 and laboratory analysis substantiating the necessity of off-site disposal of contaminated soil; and

(e) Documentation to establish that the owner or operator has complied with the administrative regulations or written directions of the cabinet.

(2) The fund [Commission staff] may require additional information and documentation to determine the eligibility, necessity and reasonableness of a cost or costs contained in a request for payment.

(3)(a) The fund [Commission staff] shall review a [all] claim requesting payment within ninety (90) days of its receipt by the fund [submission], unless an extension of time is agreed to by the applicant, and subject to subsection (5) of this section;

(b) If the claim is determined to be deficient, the ~~fund~~ ~~[commission staff]~~ shall notify the applicant, by certified mail, of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the ~~fund~~ ~~[commission]~~ within fifteen (15) days of the notice of receipt by the applicant. The ~~fund~~ ~~[commission]~~ may grant the applicant a thirty (30) day extension if the written request is received ~~[by the commission]~~ within fifteen (15) days of receipt of the notice of deficiency;

(c) If the applicant fails to correct the deficiency or to supply the additional information required by the ~~fund~~ ~~[commission]~~ staff, that portion of the claim shall be denied.

(4) The ~~fund~~ ~~[commission]~~ shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment.

(5) The claim may be submitted with the application for ~~an~~ assistance ~~but will not be considered received for review until the application has been approved by the secretary or the secretary's designee. If a claim request exceeds the amount currently obligated for the facility, the claim will not be considered received for review until a sufficient obligation has been approved by the secretary [agreement].~~

(6) An owner or operator of a facility ~~with an approved Application for Assistance [covered by a fund obligation]~~ shall submit to the ~~fund~~ ~~[commission]~~, a copy of all reports required by administrative regulation or requested, in writing, by the cabinet detailing the status of remedial action at the facility, including site check, site investigation, corrective action plans, quarterly reports, closure assessment reports, site classification documents and any correspondence with the cabinet addressing remedial measures or regulatory requirements pertaining to the facility.

~~[(a) A copy of the documents listed in this subsection shall be included with a claim for reimbursement. If a claim for reimbursement was not filed for costs incurred by the owner or operator at the facility in a calendar quarter, a copy of the documents listed in this subsection shall be due no later than the last working day of the calendar quarter; and~~

~~(b) Failure to submit the documents to the commission in three (3) consecutive calendar quarters shall result in the disallowance of ten (10) percent of the remaining reimbursable costs and no additional obligation shall be made.]~~

Section 3. Contracts. (1) ~~[Effective July 14, 1993,]~~ An owner or operator contracting for the performance of corrective action, including permanent closure, change-in-service, release investigation, site check, or site investigation, shall obtain a contract from a ~~[one (1)]~~ certified contractor to be eligible for reimbursement or payment from the fund. The contract shall be obtained prior to commencing the activity except emergency response measures as directed by the cabinet. The contract shall set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including, but not limited to, the costs of personnel, sampling, excavation ~~[removal]~~, treatment or disposal of contamination, and other necessary expenses to comply with the provisions of 401 KAR Chapter 42.

(2) A copy of the contract shall be submitted with an Application for Assistance ~~[agreement]~~.

(3) An owner or operator who has submitted an application for assistance received prior to this administrative regulation shall be required to submit a copy of a contract setting forth the scope of the services to be performed detailing the unit costs to be eligible for continued reimbursement or payment from the fund.

Section 4. Signatures. (1) A claim form or an Application for Assistance shall be signed by an eligible owner or operator as follows:

(a) For a corporation by a principle executive officer of at least the level of vice-president or the duly authorized representative or agent

of the executive officer if the representative or agent is responsible for overall operation of the facility, or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, state or federal agency by either a principle, executive officer or ranking elected official.

(2) The authorized representative shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification.

(3) The ~~[authorized representative of an]~~ owner or operator signing the certification shall submit documentary evidence as requested by the ~~fund~~ ~~[commission staff]~~ to substantiate the legality of the authorized representatives power of agency.

Section 5. Criteria For Approval of a Claim. (1) ~~The fund~~ ~~[Commission staff]~~ shall review all claims with approved Applications for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account in the order in which they are received.

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with the administrative regulations of the cabinet;

(b) The costs are necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied.

(3) All claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 6. Payment. (1) Claims shall be reviewed by the ~~fund~~ ~~[commission staff]~~ to determine eligibility for payment and compliance with the administrative regulations of the ~~fund~~ ~~[commission]~~.

(2) Requests for payment covering cost incurred by an owner or operator under an approved Application for Assistance [agreement] may be submitted to the ~~fund~~ thirty (30) days following initiation of corrective action required by law. Subsequent requests for payment may be made at thirty (30) day intervals thereafter ~~[if the payment request exceeds \$1,000,]~~ until completion of the authorized activities. ~~[Upon request, the executive director may submit interim payments to the commission at more frequent intervals or for amounts below the \$1,000 payment request threshold. Each request shall be reviewed by commission staff to determine eligibility for payment and compliance with the administrative regulations of the commission.]~~

(3) All payments shall be subject to final recommendation by the executive director and approval by the secretary or the secretary's designee ~~[of the commission]~~.

Section 7. Payment Procedures. (1)(a) When an owner or operator has submitted a claim for payment by the ~~fund~~ ~~[commission]~~, payment shall be made by a check written to the eligible owner or operator, or to a designated third party ~~[designated in a restricted assistance agreement]~~. A designation made by power of attorney may be revoked at any time by notice to the attorney-in-fact and to the fund.

(b) A request for an interim partial payment shall be accompanied by documentation required by Section 2(6) of this administrative regulation; ~~[or]~~

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(c) A request for final payment shall be accompanied by a closure letter issued by the cabinet; or

(d) A request for one (1) time payment in full shall be accompanied by a closure letter issued by the cabinet.

(2) Prior to payment being issued, the eligible owner or operator shall submit documentary evidence verifying that an amount equal to the entry level has been paid by the owner or operator.

Section 8. Eligible Costs. The fund's reimbursement [Payment] for costs of corrective action shall be limited to reasonable and necessary costs, expenses and other obligations incurred for corrective action or site investigation required by law under the provisions of KRS Chapter 224 and administrative regulations pursuant thereto, as the result of motor fuel release into the environment from a petroleum storage tank. Corrective action includes initial response, initial abatement measures, site check, site investigation, initial characterization and free product removal actions performed in accordance with the requirements of 401 KAR 42:060. The fund may require the submission of a report of analytical laboratory results to substantiate the need for corrective action and may require other information and documentation needed to determine the reasonableness and necessity of corrective action. For corrective action to be necessary for fund purposes, contamination exceeding the levels for which the cabinet will allow closure must be established by the applicant.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response to a suspected release due to tank or delivery line failure if a release of motor fuel is detected or upon written direction of the cabinet;

(b) Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action;

(c) Performance of site checks, and site investigation to assess the extent of contamination caused by a motor fuel release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet or pursuant to the written directions of the cabinet;

(d) Preparation of corrective action plans;

(e) Necessary monitoring of the environment performed pursuant to the written direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(f) Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system where a release has occurred at the facility or at the written direction of the cabinet;

(g) Restoration or replacement of a private or public drinking water supply;

(h) Removal, treatment, and disposal of contaminated liquids and soils resulting from corrective action;

(i) The costs of materials purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(j) The costs of implementation of corrective action technologies such as soil venting or bioremediation, and groundwater treatment systems, if accepted by the cabinet for the facility;

(k) Costs for replacing blacktop or concrete if removal was necessary to perform the corrective action;

(l) Attorney fees integral to the performance of site corrective action, such as preparation of off-site access agreements; and

(m) Other costs requested by the applicant and approved by the fund [commission], demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(n) Purchases of capital equipment in excess of \$1,000 if the lease or rental for the equipment will exceed the purchase price. Prior approval for purchases of capital equipment in excess of \$1,000 shall be obtained from the executive director [commission or their appointed delegate].

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs and earth moving equipment;

(d) Loss of business, income or profits;

(e) Attorneys fees related to:

1. Any judicial or administrative litigation;

2. Consultation on regulatory regulations;

3. Consultation on fund [Petroleum Storage Tank Environmental Assurance Fund] administrative regulations;

4. Preparation or submittal of fund [commission] documentation; and

5. Any other services determined by the fund [commission] not to be integral to the performance of corrective action.

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan;

(i) Aesthetic improvements to the facility;

(j) Interest on overdue accounts and loans;

(k) Costs covered by insurance payable to the owner or operator;

(l) Contractor surcharges implemented because the owner or operator failed to act in a timely fashion;

(m) Any work performed that is not in compliance with safety codes;

(n) Any costs associated with releases from aboveground tanks or aboveground piping;

(o) Contractor markup expenses for in-stock materials;

(p) Contractor markup expenses for personnel costs;

(q) Rush laboratory fees unless directed by the cabinet;

(r) Costs and cost recovery for governmental emergency services;

(s) Preparation and implementation of corrective action plans when a written notice of closure [termination] is issued by the cabinet;

(t) Payment from the fund shall only be made for the costs of corrective action required by the cabinet's administrative regulations or at written direction of the cabinet and shall not be made for costs to upgrade the facility. Payment from the fund will not be made for any work or portion of that work performed at a facility where the results of laboratory analysis do not confirm the need for corrective action;

(u) Cost of any party or parties employed to act as a surrogate or stand-in for the owner or operator of the facility.

Section 9. Delegation to Executive Director. The secretary [commission] may delegate responsibility for the approval of a claim, an Application for Assistance [agreement], or the payment of a claim to the executive director.

Section 10. Subrogation. Prior to making payment of a claim, the fund [commission] shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the fund [commission] for the performance of corrective action from the person responsible or liable for the release.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 19, 1996, five working days prior to the

hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: The tank owners or operators are financially responsible for \$1,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 167, amending KRS 224.60-115, required these amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the amending of this section. Additional changes were made to improve the efficiency of claims processing.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows. Being less stringent would cause undue delays in the processing and payment of claims.

2. More stringent: The fund cannot be more stringent than the statute allows. More stringent standards would cause fewer reimbursements and defeat the statutory goal of assisting the owners and operators of petroleum storage tanks.

3. Present proposal: The amended regulation contains the claims procedures to be followed by owners or operators eligible to participate in the fund.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement mechanisms for payments up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no statute, administrative regulations, or government policy in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The amendments should speed the process of receiving payment from the fund.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.

2. State compliance standards. There are no standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

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.

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. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will impose

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no different claim procedure from that imposed on a nongovernmental entity.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:090. Ranking system.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The amendments to KRS 224.60-130 enacted by the 1992 Kentucky General Assembly require the fund ~~[commission]~~ to establish a ranking system to be used for the distribution of amounts from the petroleum storage tank account for the purpose of corrective action. In promulgating the administrative regulations the fund ~~[commission]~~ shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by release into the environment from a petroleum storage tank. This administrative regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action.

Section 1. Applicability. An owner or operator of petroleum storage tanks eligible to participate in the petroleum storage tank account 415 KAR 1:070 shall not be classified pursuant to this administrative regulation for reimbursement if:

(1) The owner or operator ~~is~~ is an individual, owning or operating ~~[with an interest in only one (1) facility, or has]~~ five (5) or fewer tanks, whose average adjusted gross income for the five (5) year period, prior to applying ~~[application]~~ for assistance from the fund, is less than \$50,000; or

(2) The owner or operator has ~~[of]~~ tanks that were abandoned or closed prior to December 22, 1988. This subsection includes ~~[and including]~~ facilities under the direction of the implementing agency pursuant to 401 KAR 42:080 at the time the release is detected.

Section 2. Priority for Environmental Damage. (1) The ranking of a facility to determine priority for the distribution of amounts from the petroleum storage tank account based upon the extent of damage caused or threatened by a release of petroleum into the environment from a petroleum storage tank at the facility shall be based upon the Petroleum Underground Storage Tank System Facility Classification Outline (1994) incorporated by reference pursuant to 401 KAR 42:080 and the administrative regulations adopted by the cabinet establishing standards for corrective action for release into the environment from a petroleum storage tank.

(2) Priority for distribution of amounts from the petroleum storage tank account due to the extent of environmental harm shall be given to those facilities:

(a) First, where the release of petroleum to the environment has contaminated a domestic use well, domestic use spring, domestic use well head protection area, as defined in 401 KAR 42:080, a drinking water supply, or a utility conduit in amounts in excess of a maximum contaminant level for petroleum constituents, or a statistically significant increase over background for petroleum constituents which do not have a maximum contaminant level, or the facility has been determined to be the source of fumes in an occupied building;

(b) Second, where the facility has encountered groundwater and is required to meet the levels specified in Groundwater Table 1 (2) of the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080, for releases of

petroleum which pose a direct threat of contamination to a domestic use well, domestic use spring, domestic use well head protection area, a drinking water supply or a utility conduit; or

(c) Third, where areas outside the facility's property boundary have been impacted by a release, but has not contaminated a domestic use well, spring or well head protection area, does not pose a threat to a domestic use well, domestic use spring, domestic use well head protection area, drinking water supply, or a utility conduit and has not been determined to be a source of fumes in occupied buildings.

(3) The owner or operator of the facility shall submit information to the fund ~~[commission]~~ to establish that the release from the facility is within a category established in subsection (2) of this section. The information shall be submitted on the classification guide contained in the Petroleum Underground Storage Tank System Facility Classification Outline, (October 1995 ~~[January 1994]~~), as established in 401 KAR 42:080 or its superseding administrative regulation ~~[for BTEX contamination and on the Environmental Harm Ranking Form, (October 1992), for other contamination]~~.

Section 3. Priority for Financial Ability. (1) To determine the financial ability of an owner or operator to perform corrective action, the fund ~~[commission]~~ shall consider the following factors:

(a) Whether the facility is owned by a public or private person;

(b) Whether the owner or operator liable for the cost of corrective action is an individual. Only individuals who own or operate a single facility shall receive consideration as to financial ability. Each individual shall certify that they do not have an ownership or operating interest in another facility;

(c) Whether the owner or operator is a partnership. Only a partnership that is the owner or operator of a single facility shall receive consideration as to financial ability. Each partner shall certify that they do not have an ownership or operating interest in another facility; and

(d) Whether the owner or operator of the facility is a corporation which is a subsidiary, affiliate or parent of another corporation. Only a closely held corporation which is not a subsidiary, affiliate or parent corporation and is the owner or operator of a single facility shall receive consideration as to financial ability. The officers, directors and shareholders of the corporation shall certify that they do not have an ownership or operating interest in another facility.

(2) An individual or partnership with an ownership or operating interest in more than one (1) facility may receive consideration as to financial ability if it is demonstrated that the individual or partnership has no sources of income other than revenue from the ownership or operation of the facilities and is unable to pay the entry level for participation in the petroleum storage tank account.

(3) A corporation that is not a subsidiary, affiliate, or parent of another corporation that is the owner of more than one (1) facility may receive consideration as to financial ability if the profits of the corporation are the sole source of revenue of the shareholders of the corporation, and it is demonstrated that the corporation has insufficient revenue to pay the entry level for participation in the petroleum storage tank account.

Section 4. Demonstration of Financial Ability. (1) To demonstrate financial ability, the individual, partnership or corporation shall submit ~~[to the commission]~~ the last five (5) years of income tax returns for the person, partnership or corporation.

(2) Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given to:

(a) First, an individual partnership or corporation whose average adjusted gross income for the five (5) year period is less than \$50,000, a public entity with an annual revenue and income of less than \$100,000, or an entity registered and recognized by the federal government as a tax exempt nonprofit organization;

(b) Second, an individual, partnership, or a corporation whose

average adjusted gross income for the five (5) year period is less than \$100,000 but more than \$50,000 or a public entity with annual revenue or income of less than \$250,000 but more than \$100,000;

(c) Third, an individual, partnership or a corporation whose average net income for the five (5) year period is more than \$100,000 or a public entity with an annual revenue and income of more than \$250,000.

(3) Partnerships who are applicants for consideration as to financial ability shall submit the name and Social Security number of all partners.

(4) Subchapter S or closely held C Corporations who are applicants for consideration as to financial ability shall submit the name and Social Security number of all officers, directors and shareholders in the corporation.

(5) A public entity who is an applicant for consideration as to financial ability shall submit its annual budget for the last five (5) years to demonstrate financial ability.

(6) The fund ~~(commission)~~ may require that additional information be submitted to determine the financial ability of an applicant.

Section 5. The fund ~~(commission)~~ shall have the right to recover the amounts paid to persons receiving consideration for financial ability if the information submitted to the fund ~~(commission)~~ is inaccurate or misrepresented.

Section 6. Priority For Payment or Reimbursement From the Petroleum Storage Tank Account. Reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid in order of priority according to the following:

(1) An owner or operator of a facility that meets the conditions of Section 1(1) of this administrative regulation shall have their claims paid first;

(2) An owner or operator of a facility that meets the conditions of Section 1(2) of this administrative regulation shall have their claims paid second;

(3) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid third;

(4) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid fourth;

(5) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid fifth;

(6) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid sixth;

(7) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid seventh;

(8) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid eighth;

(9) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid ninth;

(10) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid tenth;

(11) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid 11th;

(12) Claims in categories (1) through (11) of this section shall be paid in order of their category ranking. Within each category the claims shall be paid by the date of receipt of the claim;

(13)(a) All other claims of nongovernment entities for reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid based upon financial ability determined as provided in Section 4 of this administrative regulation, and in order of the date of receipt of the claim;

(b) An individual, partnership or corporation with an average net income more than \$100,000 is not required to submit income tax returns and shall be paid after the claims addressed by subsections (1) through (13)(a) of this section in order of receipt of the claim;

(14)(a) Claims from organizational units of the executive branch of the Commonwealth of Kentucky, as set forth in KRS Chapter 12 shall have their claims paid last in order of the date of receipt of the claim.

(b) A claim from a county, a municipality, or an administrative body that is not an organizational unit of the executive branch, shall be paid based upon financial ability as determined in Section 4(2) of this administrative regulation, in order of receipt of the claim, and shall be ranked in the same manner as a claim from a private person.

Section 7. Payment of Certain Classes of Claims. The fund ~~(commission)~~ may determine that only specified classes of claims as described in Section 6 of this administrative regulation will be paid.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 19, 1996, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: The tank owners or operators are financially responsible for \$1,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective

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action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 167, amending KRS 224.60-115, required these amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required the amending of this section.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation delineate the method by which sites will be ranked and the order in which claims will be paid. Clarification of certain language will make the regulation easier to understand.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide ranking for reimbursement up to one million dollars for corrective action. The ranking is based on financial ability and environmental harm. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The amendments should speed the process of determining fund placement and obligation.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage

tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, the potential environmental harm, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

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. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will delineate the priority of reimbursement of local government from the Petroleum Storage Tank Account.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:100. Third party claims.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the fund [commission] to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to receive reimbursement or payment for third-party claims. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

Section 1. Applicability. Third party claims are limited to bodily injury and property damage. Owners or operators are eligible to receive reimbursement or payment for third-party claims if they have

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been issued a certificate of eligibility pursuant to the provisions of 415 KAR 1:060 (1994) and have maintained compliance with the eligibility requirements of 415 KAR 1:060. This administrative regulation applies only to third-party claims~~[-, including claims]~~ for bodily injury and ~~[-]~~ property damage ~~[and damage to natural resources]~~, which are asserted against an owner or operator as a result of release into the environment from a petroleum storage tank at a facility eligible for participation in the financial responsibility account. Claims for property damage shall only be paid to the extent that the damages are not addressed by the performance of corrective action. Third-party claims shall be paid only to the extent specified in 401 KAR 42:090.

Section 2. Notice to the Fund ~~[Commission]~~. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall notify the fund ~~[commission]~~ of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

(2) Third-party claims shall only be paid on the basis of a final and enforceable judgment, or pursuant to an agreement reviewed and approved by the secretary ~~[commission]~~.

(3) Settlement of claims.

(a) No settlement of a third-party claim shall be made by an owner or operator without the prior approval of the fund ~~[commission]~~; and

(b) The fund shall not pay a final and enforceable third-party judgment or reimburse an owner or operator for payment of the judgment in any amount exceeding a settlement offer rejected by the owner or operator which was not submitted to the fund ~~[commission]~~ for consideration or after approval by the fund ~~[commission]~~.

Section 3. Payment of Claims. (1) Payment of claims shall be limited to actual damages caused by the release of petroleum.

(2) Payment shall be made to the third party after approval of payment by the secretary ~~[commission]~~.

(3) The amount of payment of all third-party claims caused by a release shall not exceed \$1,000,000.

(4) The fund ~~[commission]~~ shall acquire by subrogation the right of the third party to recover the amount of damages paid to the third party from the person responsible or liable for the release.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 19, 1996, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: The tank owners or operators are financially responsible for \$1,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: A recent reorganization moving this agency to the Public Protection and Regulation Cabinet required the amendment of this regulation.

Alternative:

1. Less stringent: The amendments do not alter the intent or function of the regulation.

2. More stringent: The amendments do not alter the intent or function of the regulation.

3. Present proposal: The amendments represent the change in cabinet and corresponding name change.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to compensate injured parties will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public.

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(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. This regulation applies in the same manner to all owners and operators in the Financial Responsibility Account that have third party actions brought against them.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

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.

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. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service that involves the storing of motor fuels in petroleum storage tanks will be affected by this regulation.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will address local government third party damages in the same manner as nongovernmental entities.

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank
Environmental Assurance Fund
(Amendment)

415 KAR 1:110. Contractor costs.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund ~~(commission)~~ to establish a range of amounts to be paid from the fund for the cost of corrective action, and to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation establishes the range of amounts that will be paid for the performance of particular aspects of corrective action and the manner of providing bids by contractors to determine eligibility for reimbursement from the fund.

Section 1. Range of Amounts to be Paid by the Fund for the Cost of Performing Corrective Action. (1) The fund ~~(commission)~~ shall not

pay more than the following amounts for the performance of corrective action by certified contractors, except as provided in subsection (2) of this section. All items in this section are subject to a maximum fifteen (15) percent contractor markup above actual cost, unless specifically excluded. The markup is allowed only to the extent that the cost plus the markup do not exceed the maximum cost for that item:

(a) Pavement ~~(removal and)~~ replacement, ~~(net)~~ including labor equipment and material costs:

Asphalt

Removal

includes the cost of loading:

| | |
|---|-------------------------------|
| 1) asphalt pad, for each 3 inches of thickness, per square foot | \$2.75 to \$3.25 |
| (yard) | \$1.30 to \$1.60 |
| 2) asphalt curbing, per linear foot | \$2.40 to \$2.90 |
| | [\$1.25 to \$1.65] |

Replacement

| | |
|---|-------------------------------|
| 1) asphalt pad, for each 4 inches of thickness, per square foot | \$3.50 to \$4.25 |
| (yard) | \$2.70 to \$3.30 |
| 2) asphalt curb and gutter, per linear foot | \$5.10 to \$6 |
| | [\$3.50 to \$4.40] |

Concrete

Removal

- includes the cost of loading:

| | |
|--------------------------------------|------------------|
| 1) concrete pad, per square yard | |
| 4 inches thick | \$1.70 to \$2 |
| 6 inches thick | \$3.25 to \$3.95 |
| 9 inches thick | \$8.20 to \$10 |
| 10 inches or more thick | \$26 to \$31 |
| with rebar | add 15% |
| 2) concrete curbing, per linear foot | \$4.50 to \$5.50 |

Replacement

| | |
|--|------------------|
| 1) concrete, 4 inches thick, per square foot | \$2 to \$2.80 |
| with rebar | add 15% |
| 2) for each additional inch, per square foot | \$0.20 to \$0.30 |

Transportation and disposal of asphalt or concrete, per ton

Actual cost plus maximum 4% markup, not to exceed \$28

~~(to disposal facility,~~

~~per cubic yard, for each 20 miles—mileage must be documented; if closest disposal facility not used, reasonableness of cost must be justified~~

~~\$6.60 to \$8~~

Disposal fee, per cubic yard, not to

~~exceed actual cost per unit~~ \$12 to \$25]

(b) ~~(Excavation and)~~ Disposal and replacement of contaminated soil, ~~(net)~~ including labor costs:

~~(Excavation and stockpiling or loading directly~~

~~to trucks, per cubic yard~~ \$3.15 to \$3.85]

Install and compact backfill, per ton includes

| | |
|---|-------------------------|
| <u>purchase of materials, equipment, labor and transportation</u> | \$11 to \$17 |
| (cubic yard) | \$9 to \$15] |

~~(Transportation of contaminated soil to~~

~~disposal facility, per cubic yard, for each 20 miles—mileage must be~~

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documented, if closest disposal facility not used, reasonableness of cost must be justified \$6.60 to \$8]

Transportation and disposal of contaminated soil including all equipment, and labor, [fee,] per ton Actual cost plus maximum 4% markup, not to exceed \$28

cubic yard, not to exceed actual cost per unit \$12 to \$25]

(c) Treatment of soils and sludge ~~[or water, not]~~ including labor costs:

~~[Pump and treat contaminated water and charcoal filtration, per 1,000 gallons~~ \$0.25 to \$2.50

~~Operation of air stripper, per 1,000 gallons~~ \$0.05 to \$0.25]

Treatment of contaminated soil by thermal desorber, landfarming, or other methods, per ton. Cost includes design, permitting, monitoring, construction, environmental compliance, reporting, closure of facility, labor, equipment, markup, and all other costs necessary for treatment of the material. Quantity of material treated to be determined by survey, accurately measured dimensions, weight tickets or other method approved by the fund prior to removal of the material from the UST facility or initiation of treatment. \$25

~~[treatment of contaminated soil, per cubic yard, not to exceed actual cost per unit~~ \$12 to \$25]

Transportation and disposal of drummed tank sludges, per drum Actual cost plus a maximum 4% markup, not to exceed \$350

(d) One (1) of the following methods shall be used to determine the total reimbursable cost for disposal of contaminated water:

1. Treatment of contaminated water including all equipment, labor, mobilization, permitting, and other associated charges, per gallon \$0.50

2.a. Disposal of contaminated water in wastewater treatment plan, per gallon Actual cost plus maximum 4% markup
[not to exceed actual cost per unit \$0.50 to \$1.50]

(b) Pumping and transportation of contaminated water to approved facility, including truck, driver and travel time, per gallon \$0.05

(e) ~~[(d)]~~ Labor rates, per hour:

Labor rates include all fringes and benefits, and contractor's overhead and profits. All labor rates include cost of standard office equipment and standard tools of the profession.

| | |
|-----------------------|--------------|
| Carpenter | \$25 to \$35 |
| Cement finisher | \$25 to \$35 |
| Electrician | \$25 to \$30 |
| Electrical contractor | \$30 to \$40 |
| Equipment operator | \$20 to \$30 |
| Laborer | \$15 to \$20 |

| | |
|--------------------|--------------|
| Master plumber | \$30 to \$40 |
| Journeyman plumber | \$20 to \$30 |
| Apprentice plumber | \$20 to \$25 |

(f) Professional and technical ~~[(e) Geologic and field services]~~ labor rates, per hour:

Labor rates include all fringes and benefits, and contractor's overhead and profits.

| | |
|-----------------------|--------------|
| Certified contractor | \$75 to \$90 |
| Professional engineer | \$70 to \$80 |
| Engineer-in-training | \$45 to \$55 |
| Geologist | \$45 to \$55 |
| Registered geologist | \$70 to \$80 |
| Drafting/CAD person | \$25 to \$35 |

including computer time

Senior environmental technician, requires an associate degree in an environmental related field or a minimum of five (5) years of environmental experience \$35 to \$45

Environmental technician, trained in sample collection \$25 to \$30
[\$35 to \$45]

Environmental specialist, must have a college ~~[bachelor of science]~~ degree in chemistry, biochemistry, biology, ~~[or]~~ soil science, agronomy, or other appropriate college degree or experience as may be approved by the executive director \$45 to \$55

Secretarial or clerical \$15 to \$20

Mileage, per mile for automobile or pickup truck ~~[or utility vehicle]~~ \$0.25 [0.22]

Mileage, per mile for utility truck \$0.30

Overnight lodging - must be demonstrated to be necessary Actual cost, not to exceed \$55 per night
[\$35 to \$70]

Meals - when overnight stay is necessary

| | |
|-----------|------|
| Breakfast | \$4 |
| Lunch | \$5 |
| Supper | \$11 |

~~[Long distance telephone calls~~ Actual cost]

Soil gas analysis for VOC (equipment charge), per day \$150

(g) ~~[(f)]~~ Environmental exploration - includes equipment, material and ~~does not include~~ labor costs unless otherwise ~~[see]~~ stated:

1. Mobilization and demobilization of drilling equipment (includes rig, two (2) man crew, labor for gathering of equipment, tools, travel time and initial off-site steam cleaning):

a. ~~[(1)]~~ Auger rig, core rig, or wash rotary rig, per mile, minimum of \$200 \$2 to \$3

b. ~~[(2)]~~ Air rotary rig, per mile, minimum of \$350 \$3.50 to \$4

(2) Installation of monitoring well, including decontamination of down hole materials and grout or backfill materials [4-inch diameter per linear foot] [\$20 to \$35]

(a) Two (2) inch diameter casing per linear foot \$14 to \$16

(b) Four (4) inch diameter casing per linear foot \$15 to \$20

Necessity for using a four (4) inch diameter casing must be established.

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| | |
|--|-----------------------------|
| <u>(3) Construction of monitoring well surface completion (includes concrete pad, protective casing or manhole, locking cap, etc.) including any labor, equipment, and material costs. If any component listed is not installed, surface completion cost is not allowed.</u> | <u>\$250 each</u> |
| <u>(4)(a) Drilling in unconsolidated material (excluding monitoring well) per linear foot</u> | <u>\$5 to \$7 [to \$30]</u> |
| <u>(b) For continuous split spoon sample collection add five (5) dollars per linear foot.</u> | |
| <u>(c) For split spoon sample collection at five (5) foot intervals add two (2) dollars and fifty (50) cents per linear foot.</u> | |
| <u>(d) Random split spoon sampling, per sample</u> | <u>\$13 to \$17</u> |
| <u>(5)(a) Drilling in unconsolidated material for monitoring well constructing per linear foot</u> | <u>\$8 to \$11</u> |
| <u>(b) For continuous split spoon sample collection add four (4) dollars per linear foot.</u> | |
| <u>(c) For split spoon sample collection at five (5) foot intervals add two (2) dollars per linear foot.</u> | |
| <u>(d) Random split spoon sampling, per sample</u> | <u>\$13 to \$17</u> |
| <u>(6) Drilling in rock (per linear foot)</u> | <u>\$18 to \$22</u> |
| <u>(7) For all drilling costs, for depths greater than sixty (60) feet, add two (2) dollars and forty (40) cents per linear foot. [Hourly services (rig and two (2) man crew) May include drilling, well installation, decontamination, well development, difficult moving, and delay (not related to weather or mechanical breakdown), per hour</u> | <u>\$110 to \$130]</u> |
| <u>(8) Well abandonment including all material, equipment and labor costs, per linear foot</u> | |
| <u>(a) Two (2) inch diameter casing</u> | <u>\$5 to \$7</u> |
| <u>(b) For each additional two (2) inches in casing diameter, add fifty (50) percent.</u> | |
| <u>(9) Preparation and submittal of well records, per well</u> | <u>\$25 to \$35</u> |
| <u>(10) Equipment, materials and supplies:</u> | |
| <u>Air compressor per day</u> | <u>\$65 to \$75</u> |
| <u>Backhoe, trailer and accessories, per hour</u> | <u>\$50 to \$55</u> |
| <u>Concrete saw, per day</u> | <u>\$25 to \$35</u> |
| <u>Concrete saw (push type), per day</u> | <u>\$70 to \$80</u> |
| <u>Conductivity meter, per day</u> | <u>\$15 to \$20</u> |
| <u>Disposal drum, each</u> | <u>\$30 to \$35</u> |
| <u>Explosimeter, per day</u> | <u>\$30 to \$35</u> |
| <u>FID, OVA, per day</u> | <u>\$80 to \$95</u> |
| <u>Generator, per day</u> | <u>\$50 to \$55</u> |
| <u>Grout unit, per day</u> | <u>\$45 to \$75</u> |
| <u>Jackhammer, per day</u> | <u>\$20 to \$25</u> |
| <u>PID/HNu, per day</u> | <u>\$60 to \$75</u> |
| <u>Power auger, per day</u> | <u>\$40 to \$50</u> |
| <u>Self-contained steam cleaning unit, per day</u> | <u>\$100 to \$125</u> |
| <u>Steam cleaner, per day</u> | <u>\$50 to \$75</u> |
| <u>[Self-contained steam cleaning unit, per day</u> | <u>\$100 to \$125</u> |
| <u>Grout unit, per day</u> | <u>\$45 to \$75]</u> |
| <u>Survey equipment, per day</u> | <u>\$30 to \$35</u> |
| <u>Water level indicator, per day</u> | <u>\$10 to \$12</u> |

| | |
|---|--------------------------|
| <u>Water trailer (500 gal.), per day</u> | <u>\$50 to \$75</u> |
| <u>Water truck (800 [4000] gallon capacity or greater), per day</u> | <u>\$125 to \$175</u> |
| <u>Copies, per page</u> | <u>\$0.05</u> |
| <u>Faxes, per page</u> | <u>\$1.25</u> |
| <u>[Materials</u> | |
| <u>Well materials, decontamination supplies, health and safety supplies, grout, well casing and screen, filter pack, well covers, etc.</u> | <u>Actual cost +15%]</u> |
| <u>(11) The fund will only reimburse for one (1) environmental professional to assist during drilling activities in visual inspection of samples, logging of boreholes or monitoring wells or other task.</u> | |
| <u>(h) [(g)] Sampling analysis, not including labor to take sample; including sampling materials, transportation of sample, and chain of custody:</u> | |
| <u>Soil Sample</u> | |
| <u>BTEX (benzene, toluene, ethylbenzene, xylene)</u> | <u>[\$50 to \$120]</u> |
| <u>Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021</u> | <u>\$75 to \$88</u> |
| <u>Polynuclear Aromatic Hydrocarbons Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310</u> | <u>\$155 to \$215</u> |
| <u>Total recoverable oil and grease Method SW 3540 or 3550 in conjunction with 846 9071</u> | <u>\$37 to \$46</u> |
| | <u>[\$50 to \$60]</u> |
| <u>Total lead</u> | |
| <u>Method SW 846 7421 or 6010</u> | <u>\$23 to \$30</u> |
| | <u>[\$25 to \$45]</u> |
| <u>Water Samples</u> | |
| <u>BTEX (benzene, toluene, ethylbenzene, xylene)</u> | <u>[\$50 to \$120]</u> |
| <u>Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021</u> | <u>\$72 to \$84</u> |
| <u>Polynuclear Aromatic Hydrocarbons Method 3510 or 3520 [3540 or 3550] in conjunction with SW 846, 8100, 8270 or 8310</u> | <u>\$161 to \$190</u> |
| <u>Total recoverable oil and grease Method 3510 or 3520 in conjunction with SW 846 1664 or 9070</u> | <u>\$35 to \$48</u> |
| <u>Total Lead</u> | <u>[\$30 to \$60]</u> |
| <u>Method SW 846 7420 7421 or 6010</u> | <u>\$23 to \$29</u> |
| <u>Sludge and Cleaning Liquid Samples</u> | |
| <u>Toxicity Characteristic Leading Procedure</u> | |
| <u>Metals</u> | <u>\$230 to \$265</u> |
| <u>Volatiles</u> | <u>\$290 to \$320</u> |
| <u>Acid/base/neutral</u> | <u>\$375 to \$415</u> |
| <u>Pesticides and herbicides</u> | <u>\$290 to \$315</u> |
| | <u>[\$660 to \$750]</u> |
| <u>for the parameters of metals, volatile organics, and Acid/Base/Neutral</u> | |
| <u>If the parameter of Pesticides and Herbicides is required</u> | <u>\$50]</u> |
| <u>Ignitability</u> | |
| <u>SW846 Method 1010 [9095]</u> | <u>\$25 to \$35</u> |
| <u>Paint Filter Test</u> | |
| <u>SW846 Method 9095 [4040]</u> | <u>\$15 to \$28 [30]</u> |
| <u>pH</u> | <u>\$12 to \$20</u> |
| <u>(i) [(h)] Legal Services</u> | |
| <u>Attorney</u> | |
| <u>Sole practitioner, per hour</u> | <u>\$40</u> |

| | |
|--|------|
| Partner or principle in firm, per hour | \$75 |
| Associate in firm, per hour | \$60 |
| Paralegal, per hour | \$30 |

(2) An amount in excess of the maximum amount set forth in subsection (1) may be approved by the fund [commission] if the contractor demonstrates that the additional cost is necessary to the performance of corrective action and the services or materials are not available at a lower cost.

(3) Original invoices and supporting documentation shall be submitted to the fund along with any payment request under this section to verify that the cost incurred is necessary and reasonable. The fund may require additional documentation when required to determine the reasonableness or necessity of a payment request.

(4) Upon agreement of the owner/operator and the fund, the fund may reimburse in a manner other than that prescribed in Section 1 of this administrative regulation. Such methods include but are not limited to, task orders, firm fixed price and pay-for-performance. Any such agreement shall be reflected in a memorandum of agreement and set forth the method of reimbursement, the amount to be reimbursed and the rate or schedule of payment.

(5) At the beginning of each calendar year the secretary [At the first regular meeting of the commission in each calendar year, the commission] shall direct the staff [appoint a committee] to review the appropriateness of the range of amounts established by this administrative regulation. [The committee shall consist of three (3) members of the commission and the executive director.] The staff [committee] shall:

- (a) Establish a mailing list of persons who want to comment on this issue;
- (b) Solicit comments and information from interested persons and persons who contract to perform corrective action;
- (c) Conduct a public hearing to receive comment on the cost of corrective action; and
- (d) Submit a report to the secretary [commission] by July 1 of each calendar year recommending changes or revisions to this administrative regulation.

Section 2. Range of Amounts to be Paid for Items Not Listed in Section 1 of this Administrative Regulation. (1) Items not listed in Section 1 of this administrative regulation are subject to the following qualifications:

- (a) Original invoices from manufacturers or retailers shall be supplied to the fund, with supporting documentation, if required [commission];
- (b) Unlisted items shall be subject to a maximum reimbursable amount of fifteen (15) percent above cost, which includes rentals or purchases;
- (c) No markups shall be allowed on any pass through costs such as utilities or employee expense accounts; and
- (d) Out-of-state travel expenses, including but not limited to air fare, shall not be reimbursed unless demonstrated to be necessary for the performance of corrective action (example: expertise not available within state);
- (e) The cost is reasonable and necessary to the performance of corrective action.

(2) Costs for alternative corrective action technologies, such as soil venting, bioremediation, and groundwater treatment systems, shall be subject to the range of costs set forth in [this] Section 1 of this administrative regulation where appropriate. Additional costs associated with the technology shall be justified as to reasonableness and necessity.

(3) Costs of corrective action performed by an owner or operator as an initial response or an action to prevent or remedy an emergency situation, or as directed by the cabinet, shall be subject to the range of costs set forth in Section 1 of this administrative regulation where appropriate. These costs shall be justified as to reasonableness and necessity.

Section 3. Eligibility Criteria for Persons who Contract to Perform Corrective Action. To be eligible for payment from the fund, persons who contract to perform corrective action shall be certified according to 415 KAR 1:114. ~~[4:115 and shall provide a bid proposal to the owner or operator. The bid shall be submitted on the "Bid Proposal Form"]~~

(1) Personnel shall be categorized according to the applicable type of personnel described in Section 1 of this administrative regulation and the appropriate rate applied;

(2) Costs shall be itemized to comply with the cost items listed in Section 1 of this administrative regulation;

(3) Original invoices shall be submitted with a request for payment or reimbursement from the fund;

(4) Documentation and additional information to support the request for payment or reimbursement shall be supplied as requested by the [commission] staff.

Section 4. Certification of Contractor Costs. (1)(a) The fund [commission] may issue a request for proposals from individuals or companies engaged in the performance of corrective action for releases from petroleum storage tanks.

(b) The fund [commission] shall establish the date by which the proposals are to ~~[shall]~~ be submitted ~~[in its request for proposals]~~.

(2) The fund [commission] shall specify in the notice of the request for proposals the information to be submitted by the individual or company. At a minimum, the information to be supplied shall include:

(a) Verification that the submitter is a certified contractor, or a company employing certified contractors. A company shall include the name and position of its certified contractors;

(b) A statement of qualification of the individual or company, including a statement of relevant experience in the performance of corrective action for releases from petroleum storage tanks;

(c) A list of references, including the name, business address, and telephone number of at least three (3) persons for whom the individual or company has performed corrective action for a release from a petroleum storage tank. If the company has not performed corrective action for at least three (3) persons, a list of persons for whom the certified contractors employed by the company have performed corrective action may be submitted;

(d) A schedule of fees that the individual or company proposes to charge an owner or operator for the performances of corrective action for a release from a petroleum storage tank. The schedule of fees shall set forth a cost for each of the items listed in Section 1 of this administrative regulation. The schedule shall note any differences or variations in listed costs attributable to length of necessary transportation, or other factors. If subcontractors are to be used, the schedule shall specify the maximum cost to be charged by the individual or company for the corrective action activities to be performed by a subcontractor;

(e) A verification by the individual, or an authorized agent of the company, that the proposal is true and accurate, and that the schedule of fees shall be applicable for a period of one (1) year from the date by which proposals shall be submitted to the fund [commission];

(3) The fund [commission] shall review all proposals received after the date established ~~[by the commission]~~ for submittal of proposals. Proposals are to be submitted for the purpose of assisting the fund [commission] in the regulation of persons who contract to perform corrective action. These proposals shall not be made available for public inspection until after the date for submittal established by the fund [commission], since to do so would create an unfair advantage for competitors of the individual or company. Proposals may not be amended after the date for submittal, except as provided in subsection (6) of this section.

(4) The [Commission] staff shall review each proposal to verify that the individual or company complies with the requirements for

contractor certification, is qualified to perform corrective action for releases from petroleum storage tanks, and the proposed costs comply with the requirements of Section 1 of this administrative regulation.

(5) If the fund [commission] verifies that the individual or company complies with the requirements of subsection (4) of this section, the individual or company shall be placed upon a list of approved contractors that shall be made available to owners or operators of petroleum storage tanks upon request. The list of approved contractors shall be sent to all fund applicants and owners or operators participating in the fund.

(6) If the fund [commission] verifies a proposal, the individual or company shall not charge the owner or operator more than the listed costs on the schedule of fees unless the individual or company demonstrates to the satisfaction of the fund [commission] that:

(a) The increase in costs was beyond the reasonable control of the contractor;

(b) The increase is due to an increase in costs to the contractor, such as an increase in disposal fees or equipment costs, and is supported by adequate documentation; and

(c) The increase is reasonable and necessary to cover the actual costs of performing corrective action.

(7) Claims submitted to the fund [commission] by an owner or operator for the costs of corrective action performed by an approved contractor shall be reviewed by the [commission] staff to determine that the costs were necessary.

Section 5. ~~[(1) "Bid Proposal Form (August, 1993)" is incorporated by reference.~~

~~(2) This form may be obtained, inspected, or copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky, (502) 564-5981, 8 a.m. to 4:30 p.m., ET, Monday through Friday.~~

~~Section 6.]~~ The provisions of this administrative regulation shall be enforced beginning January 1, 1994.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 19, 1996, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: The tank owners or operators are financially responsible for the corrective action cost resulting from a release into the environment. Amendments to reflect price adjustments in the industry will result in a higher percentage of total cost being returned to the owner or operator.

2. Continuing costs or savings: Tank owners or operators will continue to experience a higher rate of reimbursement associated with payment of corrective action.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was \$ 1.3 million.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: The fund contends these amendments reflect reasonable cost associated with corrective action for a release for a petroleum storage tank. Any alternatives would not meet the statutory mandate of the fund.

Alternative:

1. Less stringent: The fund could allow the owner or operator to set the amounts to be reimbursed, but such an arrangement contains the potential for abuse and the waste of taxpayer money.

2. More stringent: The fund could set more stringent cost amounts that do not reflect the current market for corrective action. To do so, however, would lead to a reduction in the number of available contractors willing to accept fund reimbursement to perform corrective action.

3. Present proposal: The amended regulation contains cost that represent the current reasonable cost for the performance of corrective action and reflect market prices. A recent reorganization and name change is also reflected in the regulation.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action and one million dollars for third party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. The amendments should speed the process of reimbursing claims and result in the appropriate level of reimbursement for owners and operators.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement. Was tiering applied: No. Tiering was not applied since the cost of corrective action to be reimbursed under the amended regulation is on a per unit basis. Since the amount to be reimbursed depends on the amount expended, smaller businesses are not unduly effected.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to perform corrective action on a release to the environment caused by a petroleum storage tank. A state assurance fund reimbursing the cost of corrective action is one method of making this demonstration.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

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.

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. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service that requires the agency to own or operate petroleum storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will address local government cost reimbursement in the same manner as nongovernmental entities.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:114. Contractor certification.

RELATES TO: KRS 224.60-110, 224.60-130

STATUTORY AUTHORITY: KRS 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund [Petroleum Storage Tank Environmental Assurance

~~Fund-Commission~~] to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation sets forth the criteria for obtaining certification ~~[from the commission]~~ to be eligible to contract to perform corrective action for a release from an underground petroleum storage tank~~[-, and to be eligible to receive reimbursement or payment from the fund]~~. This administrative regulation is necessary to set minimum standards for determining technical competency and proficiency in the performance of corrective action and general knowledge of cleanup standards required to obtain closure from the Underground Storage Tank Branch, health and safety standards, and Petroleum Storage Tank Environmental Assurance Fund administrative regulations.

Section 1. Definitions. (1) "Certified contractor" means an individual certified by the fund ~~[commission]~~ as qualified to engage in the performance or supervision of corrective action at a facility in the event of a release from a petroleum storage tank system.

(2) "Company" means a person, other than an individual, engaged in the business of performing corrective action for a release from a petroleum storage tank system and who employs one (1) or more certified contractors.

(3) "Interim contractor" means an individual who is not a certified contractor and is identified by a company to replace a certified contractor in accordance with Section 8 of this administrative regulation.

(4) "Participation in" means direct and substantial involvement in each aspect of corrective action, including site characterization, preparation of site investigation reports, preparation of proposed corrective action plans, and implementation of corrective action plans approved by the cabinet.

(5) "Supervise" means having the authority and responsibility for the performance of corrective action at a facility in the event of a release from petroleum storage tank system, and having the ability to exercise independent judgement and direct the activities of employees or subcontractors in the performance of corrective action to achieve compliance with the administrative regulations of the cabinet.

(6) "Cabinet" is defined by KRS 224.60-115(2).

Section 2. Applicability. (1) Beginning March 1, 1995, costs for actions performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund if:

(a) They are performed or supervised by an individual who is certified by the fund ~~[commission]~~;

(b) They are performed in compliance with 401 KAR Chapter 42; and

(c) The costs are necessary and reasonable, and performed in compliance with 415 KAR Chapter 1;

(d) This requirement shall apply only to applications approved ~~[for assistance agreements made]~~ after March 1, 1995.

(2) Certified contractors shall perform or supervise corrective action, such as, site checks, site investigations, and preparation of corrective action plans, in accordance with the administrative regulations of the cabinet.

(3) To be eligible for reimbursement from the fund, the person who contracts to perform corrective action shall designate the certified contractor responsible for supervision of the corrective action prior to incurring costs by giving written notice to the owner or operator of the facility and the fund ~~[commission]~~. If the certified contractor changes, a new notice shall be given.

(4) A person or company who installs, repairs, closes, or removes an underground storage tank, not involving the performance of corrective action, shall not be subject to this administrative regulation.

Section 3. Application Requirements. (1) An applicant for certified contractor shall:

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(a) Submit an application to the fund ~~[commission]~~ on the Certified Contractor Application form; and

(b) Submit verification of experience by participation in the performance of corrective action at facilities where a release occurred from a petroleum storage tank system; and

(c) Complete the examination requirements of this administrative regulation.

(2) An application to take the certified contractor examination shall be denied ~~[by the commission]~~ if the applicant:

(a) Fails to provide the information required by the application form; or

(b) Fails to comply with the experience requirements of this administrative regulation; or

(c) Makes a misrepresentation or submits false information in the application.

(3) An applicant, that has been assigned a testing date and time, shall request a change in their testing schedule in writing to the fund ~~[commission]~~. If the request for a rescheduled testing date falls into another testing quarter, the applicant must reapply to the fund ~~[commission]~~.

(4) An applicant requesting to resit the certified contractor examination shall reapply to the fund ~~[commission]~~.

Section 4. Experience Requirements. (1) An applicant shall demonstrate participation in, as defined in Section 1(4) of this administrative regulation, the performance of corrective action at a minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.

(2) Technical training approved by the fund ~~[commission]~~ shall reduce the experience requirement of participation in the performance of corrective action to a minimum of four (4) facilities.

(3) A professional engineer registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

(4) A certified professional geologist registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

Section 5. Examination Requirements. An applicant for certified contractor shall take and pass a written examination administered by the fund ~~[commission]~~ in compliance with this section.

(1) The examination for certification shall be a written multiple choice examination covering all aspects of:

(a) Corrective action for a release from a petroleum storage tank system - the examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to performing corrective action where a release has occurred from a petroleum storage tank system; and

(b) Applicable occupational health and safety and public health and safety requirements - the examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to applicable occupational health and safety and public health and safety requirements; and

(c) Knowledge of the reporting requirements, documentation requirements and procedures of the regulatory agency (Underground Storage Tank Branch) and the Office of the Petroleum Storage Tank Environmental Assurance Fund ~~[Commission]~~ - the examination shall test the applicant's knowledge of codes, laws and regulations with respect to these two (2) governmental agencies.

(2) A minimum score of seventy-five (75) percent on the examination shall be considered passing.

(3) Examinations shall be given, at a minimum, quarterly through December 31, 1997, and semiannually thereafter.

(4) An application to take the examination shall be filed with the fund ~~[commission]~~ at least ten (10) working days in advance of the

testing date to take the examination.

(5) All examinations shall be graded and the applicants shall be notified within fifteen (15) working days. Examination papers shall not be returned to or reviewed by the applicant, however, the applicant may review their test response sheet by appointment.

(6) The fund ~~[commission]~~ shall furnish the applicant with instructions for taking the examination upon receipt of a completed application. Instruction sheets shall refer the applicant to appropriate laws, regulations and industry publications.

Section 6. Certification and Renewal Procedures. (1) The fund ~~[commission]~~ shall issue a certificate to each individual who successfully complies with this administrative regulation. The certificate shall be renewed biannually.

(2) An application for renewal shall be submitted to the fund ~~[commission]~~ on the Certified Contractor Application for Renewal form.

(3) The renewal of a certificate shall be denied ~~[by the commission]~~ if an applicant:

(a) Fails to provide the information required by the Certified Contractor Application for Renewal form; or

(b) Makes a misrepresentation or submits false information in the application for renewal; or

(c) Failed to participate in or supervise a corrective action during the two (2) years period ~~[year]~~ prior to renewal; or

(d) Fails to maintain a professional registration.

(4) An applicant denied the opportunity to take the certification test or denied the renewal of their contractor certification may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

(5) The fund ~~[commission]~~ may require that a certified contractor take and pass a written examination to renew a certification if there has been a significant change in the laws, codes or industry recommended practices with respect to performing corrective action or procedures, reporting requirements and document requirements to be submitted to the Underground Storage Tank Branch or the Office of the Petroleum Storage Tank Environmental Assurance Fund ~~[Commission]~~ since the date of original certification.

(a) The fund ~~[commission]~~ may waive this requirement for professional engineers and certified professional geologists registered in Kentucky if the applicant has submitted proof of successful completion of pertinent training.

(b) The determination to waive this requirement rests solely in the fund ~~[commission]~~.

Section 7. Revocation or Suspension of Certification. (1) A certificate issued pursuant to this administrative regulation may be suspended or revoked ~~[by the commission]~~ if the certified contractor:

(a) Negligently, incompetently, recklessly or intentionally violated any provision of this administrative regulation or any required federal, state or local regulation, code or standard relating to corrective action; or

(b) Recklessly or intentionally caused or permitted a person under the contractor's supervision to perform corrective action in violation of standards of the State Fire Marshall or the cabinet; or

(c) Obtained the certification through fraud or misrepresentation; ~~[or]~~

(d) Fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards; or

(e) Knowingly or intentionally submits false information, documentation or payment request to owners, operators, or the fund.

(2) The secretary shall have authority to revoke or suspend a certification. (The commission shall address the charges specified in subsection (1)(a) through (d) of this section against a certified contractor. The commission vote on issues of suspension or revoca-

tion shall be in open session and require a simple majority of those ~~commission members voting.~~ The secretary ~~[commission]~~ shall then cause a letter to be issued notifying the certified individual of the fund's ~~[commission's]~~ action.

(3) A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

Section 8. Interim Contractor. (1) A company engaged in the performance of corrective action at a facility shall immediately notify the fund ~~[commission]~~ in writing of the extended absence of a certified contractor due to an emergency or unanticipated circumstances. The notice shall provide the ~~[commission with the]~~ following information:

(a) Name and qualifications of the individual replacing the certified contractor; and

(b) The length of time for which the company seeks to have the interim contractor fulfill the obligations of the certified contractor.

(2) The fund ~~[commission]~~ shall evaluate the qualifications of the designated interim contractor and shall notify the company of the ~~[commission's]~~ determination in writing within fifteen (15) days of receipt of the company's notice. The determination shall:

(a) Approve or deny the company's request for designation of the interim contractor;

(b) Specify conditions as appropriate to the facility and the interim contractor's qualifications.

Section 9. (1) The following forms are incorporated by reference:

(a) "Certified Contractor Application Form (June 1996 [March, 1994])"; and

(b) "Certified Contractor Application for Renewal Form (June 1996 [March, 1994])".

(2) These forms may be obtained, inspected and copied at the Office of the Petroleum Storage Tank Environmental Assurance Fund ~~[Commission]~~, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 19, 1996, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 400 contractors in the Commonwealth of Kentucky who perform corrective action due to releases from petroleum storage tanks.

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

1. Effect on cost of living and employment: None
2. Effect on cost of doing business: There will be an indirect cost to the contractor due to the need to have persons certified by the fund to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification.

3. First year: There will be an indirect cost due to the need to have persons certified by the fund to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification.

4. Continuing costs or savings: There will be a continuing cost due to the need to apply biannually for renewal of the certification.

5. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Individuals will be required to complete and file the application for certification and the application for renewal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The fund will experience direct costs due to the need to prepare and administer the test for certification of contractors; receive, review and maintain applications for certification; and to identify the proper materials for the certification process. The amendments will decrease the fund's cost by becoming a biannual test.

2. Continuing costs or savings: The fund anticipates continuing costs due to the need to upgrade the test on a periodic basis, to identify new materials concerning performance of corrective action, and to process applications for renewal. The amendments will decrease the fund's cost by becoming a biannual test.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to implement and administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process applications for certification and applications for renewal. The fund will provide applicants with information with which they must be familiar to obtain certification.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(5) Assessment of alternative methods: reasons why alternatives were rejected: The amendments relate to a recent reorganization and resulting name change.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows. Less stringent decertification standards would not protect the public from fraud.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The proposed regulation reflects a recent reorganization and the resulting name change. It also adds a grounds for decertifying a contractor if false information is given to the owner/operator or to the fund.

(6) Economic impact: None

(7) Benefits of the regulation: The amended regulation conforms to the executive order and avoids confusion in the regulated public. It also allows an additional reason to remove a dishonest contractor.

(8) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: This regulation overlaps and supplements 815 KAR 30:060, Underground Petroleum Storage Tank Installer/Remover Certification Regulation of the State Fire Marshal. This amendment will not effect the Fire

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Marshal's regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict. 815 KAR 30:060 applies only to the installation and removal of underground storage tanks. This regulation will not duplicate or conflict with those requirements. This regulation is more comprehensive in that it requires a knowledge of all actions necessary to properly perform corrective action due to a release from a petroleum storage tank.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(9) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks and more certified individuals.

(b) Environmental: The effect of this regulation is to provide qualified individuals to provide the services for which the fund reimburses. A positive effect on the environment is expected.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement. Was tiering applied: No. This regulation applies to all individuals and companies contracting to perform corrective action for which reimbursement or payment will be sought from the fund.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. None
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.

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? No
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.
3. State the aspect or service of local government to which this administrative regulation relates. None
4. How does this administrative regulation affect the local government or any service it provides? This regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:120. Hearings.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280
STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(f) requires the Office of the Petroleum Storage Tank Environmental Assurance Fund [commission] to hear complaints brought regarding the payment of claims from the fund. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Definitions. (1) "Administrative hearing" means a formal adjudicatory proceeding conducted by the agency on the record to adjudicate the legal rights, duties, privileges or immunities of a named person at which each party is given the opportunity, after proper notice, to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

(2) "Administrative action" means the formal administrative adjudicatory proceeding before the agency from the filing of the pleading commencing the formal administrative proceedings until the time for all administrative appeals has run regarding the claims made in the commencing document.

(3) "The agency" means the Office of the Petroleum Storage Tank Environmental Assurance Fund.

(4) "Docket coordinator" means the person responsible for receiving and filing pleadings in administrative hearings. The docket coordinator shall be located at the office of the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leewood Drive, Frankfort, Kentucky 40601.

(5) "Hearing officer" is defined in KRS 13B.010(7).

(6) The "notice" means the notice of hearing required by KRS 13B.050.

(7) "Party" is defined in KRS 13B.010(3).

(8) "Person" means any individual, corporate entity, state governmental agency, or unit of local, state or federal government, and shall include any "party" as defined in these administrative regulations.

(9) "Petition for hearing" means any written request by a person other than the agency for an administrative hearing before the agency, including any document which by law or administrative regulation commences an adjudicatory administrative proceeding, that is filed in accordance with these administrative regulations.

(10) "Petitioner" means any person requesting an administrative hearing to which these administrative regulations apply.

(11) "Pleading" means the petition for hearing or notice of hearing and complaint, the answer, and any other responsive pleading ordered by a hearing officer or authorized by law or administrative regulation.

(12) "Record" is defined in KRS 13B.130.

(13) "Preponderance of evidence" means substantial evidence of sufficient weight to establish that a factual allegation is more likely true than not.

(14) "Responsive pleading" means the answer or any document required or authorized by law, administrative regulation, or order of a hearing officer to be filed in response to a pleading.

(15) "Substantial evidence" means evidence that taken alone or in the light of all the evidence has sufficient probative value to induce conviction in the minds of reasonable persons.

Section 2. Reconsideration. Any person not previously heard in connection with a determination of the Office of Petroleum Storage Tank Environmental Assurance Fund or the secretary denying eligibility for participation in the fund or payment of any portion of a claim, who considers himself aggrieved by such determination may request in writing that the determination be reconsidered. The writing shall set forth the grounds for the request and shall be accompanied by any documentation or other competent evidence related to the disputed issue that was not previously considered by the staff. The right to request a reconsideration of the determination shall be limited to a period of thirty (30) days after the applicant has had actual notice, or could have reasonably had notice, of the fund's action. The

staff shall evaluate the documents and other competent evidence after receipt of the request. The fund shall reevaluate the claim if the documentation or evidence accompanying the request for reconsideration warrants reconsideration of a prior recommendation on the issue. If the reconsideration by the staff or the secretary fails to resolve the applicant's concerns the applicant may request a hearing on the determination pursuant to Section 3 of this administrative regulation.

Section 3. Commencement of Hearing. (1) Petition for hearing. Any person not previously heard in connection with a determination of the Office of Petroleum Storage Tank Environmental Assurance Fund or the secretary denying eligibility for participation in the fund or payment of any portion of a claim, who considers himself aggrieved by such determination may request a formal hearing in writing. The petition for hearing shall be in writing signed by the filing party, and shall contain a short and plain statement of the facts upon which the petition is based, a request for relief, including a hearing; and the filing party's name, address and phone number. The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice, or could have reasonably had notice, of the Office of Petroleum Storage Tank Environmental Assurance Fund's action. The petition for hearing shall indicate on its face the name and address of each party to be served by the agency. Any doubts about whether a document constitutes a petition for hearing shall be resolved in favor of the filing party. Within fifteen (15) days of the filing of a petition, the agency shall issue a notice of hearing conforming to KRS 13B.050, and shall serve the notice and a copy of the petition on each person set forth on the face of the petition.

(2) Service of notice and complaint and petition. The agency shall serve the notice, complaint and copy of the petition by certified mail or personal delivery as set forth in Section 9 of this administrative regulation. If served by mail, the agency shall enter the date of mailing in the record and shall file the return receipt or returned envelope in the record when it is received by the agency.

(3) Answer.

(a) The agency shall file an answer to the allegations in that pleading within thirty (30) days of the service of the pleading.

(b) The answer shall specifically admit or deny in short and plain terms each and every allegation contained in the pleading and shall set forth all claims against other parties which arise out of the same transaction or occurrence that is the subject matter of the claims in the pleading and which fall within the agency's jurisdiction. If the answering party is unable to admit or deny an allegation in the pleading, it shall so state in his answer and this shall have effect of a denial. The answer shall be in writing, and shall include the agency's address and telephone number. Parties against whom claims are directed in an answer shall answer such claims within five (5) days after service of the answer.

(c) Filing after motion. Filing of a motion for more definite statement, motion for judgment on the pleadings, motion to dismiss or a motion for summary disposition shall toll the time to file a responsive pleading until five (5) days after the hearing officer rules on such motion.

(4) Notice of determination not to conduct hearing. Within five (5) days of the commencement of an administrative action, the agency shall notify the person commencing the action, in writing, of any determination by the agency not to conduct a hearing. The notice under this section shall give the factual, legal, and policy grounds for the agency's determination, and shall inform the petitioner of any right to appeal. Mere recitation of statutory or regulatory standards is not a sufficient summary of the grounds for the agency's action.

Section 4. Affirmative Defenses. (1) Every defense in law or fact to a claim for relief in any pleading shall be asserted in the responsive pleading thereto, if one is required.

(2) Any matter constituting an avoidance or affirmative defense in

an administrative action shall be set forth in a responsive pleading. Failure to plead an affirmative defense in a responsive pleading may constitute a waiver of that defense.

(3) The following defenses may at the option of the pleading party be asserted by motion before making a responsive pleading:

(a) Lack of jurisdiction over the person;

(b) Lack of jurisdiction over the subject matter;

(c) Improper venue;

(d) Insufficiency of process;

(e) Insufficiency of service of process;

(f) Failure to state a claim upon which relief can be granted; and

(g) Failure to join a required party. Failure to plead any of the defenses listed in this subsection in a responsive pleading shall not constitute a waiver of that defense.

Section 5. Right of Counsel. (1) Any person who appears before the agency at any stage in a formal administrative hearing shall have the right, at their own expense, to be represented or advised by legal counsel. Nothing in these administrative regulations shall be construed to allow or permit representation of a person by a nonattorney, however, individuals may represent themselves without representation by counsel.

(2) Any attorney representing a party before the agency must file a written notice of entry of appearance in each case before he may practice in that case before the agency. Filing of a notice of entry of appearance shall constitute agreement by the attorney to be bound by the provisions of this section.

(3) An attorney of record in an administrative action before the agency shall request permission to withdraw as counsel for a party in writing, with an affidavit from the moving attorney setting forth the grounds for withdrawal, certifying that the request to withdraw has been served upon the attorney's client, and an explanation why the withdrawal will not have a material adverse effect on the interests of the attorney's client.

(4) An attorney shall not withdraw from representing a person in an administrative action before the agency without permission of the hearing officer before whom he is practicing. Within ten (10) days of an administrative hearing, an attorney of record shall not be permitted to withdraw from an administrative action absent a compelling reason shown upon a written motion filed in the record.

(5) Intentional or repeated failure or refusal of an attorney to obey any of the requirements of this section shall be grounds for recommendation to the secretary that the attorney be barred from practice before the agency.

Section 6. Burden of Proof. (1) The party proposing the agency take action or grant a benefit shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion to show the propriety of the agency action or entitlement to the benefit sought.

(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.

(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.

(4) Unless otherwise ordered by the hearing officer, the party with the burden of proof shall present its evidence first at a formal administrative hearing, followed by the opposing party. If new matters are raised in the presentation of the opposing party's evidence, the hearing officer shall afford the party with the burden of proof the opportunity to present rebuttal evidence. The hearing officer, may in his discretion, order the proof in any manner which will promote the orderly and prompt conduct of the hearing.

Section 7. Assignment and Duties of Hearing Officers. The agency shall designate a hearing officer for a formal administrative

action in any manner consistent with KRS 13B.030 within ten (10) days of the commencement of the administrative action.

(1) If the agency elects to designate a hearing officer from the Division of Administrative Hearings in the Attorney General's Office under KRS 13B.030, it shall make that request in writing to the division within ten (10) days of the commencement of the administrative action.

(2) Assignment of a hearing officer from the Division of Administrative Hearings of the Office of the Attorney General shall be made according to the administrative regulations governing the conduct of the Division of Administrative Hearings of the Office of the Attorney General.

(3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under these administrative regulations and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on an agency relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by KRS 224.60-130, Chapter 13B, or these administrative regulations, including, but not limited to the authority to:

- (a) Administer oaths and affirmations;
 - (b) Issue subpoenas for witnesses and production of documents, or things;
 - (c) Regulate discovery;
 - (d) Rule on procedural requests;
 - (e) Hold prehearing conferences;
 - (f) Regulate the course of, and maintain order in the administrative hearing;
 - (g) Rule on evidentiary matters and admit in or exclude evidence from the record;
 - (h) Examine witnesses;
 - (i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;
 - (j) Make proposed findings of fact, conclusions of law and recommended orders for the secretary; and
 - (k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.
- (4) The agency shall take no further action with respect to an administrative action, except as a party litigant, as long as the administrative action is assigned to a hearing officer.

Section 8. Hearing Officer Conduct. (1) Conflict of interest.

(a) At any time during an administrative action an assigned hearing officer's continued service would violate the standard set forth in KRS 13B.040(2)(a) or a canon of judicial ethics, that hearing officer shall disqualify himself and enter a written order withdrawing from an administrative action.

(b) At any point during an administrative action a party may move the hearing officer to recuse from an administrative action. The motion to recuse shall be in writing filed in the record and shall be supported by an affidavit setting forth specific facts which demonstrate one or more of the grounds for recusal set forth in KRS 13B.040(2)(b).

(c) Within ten (10) days of recusal of a hearing officer, the secretary shall request or assign another hearing officer by written order according to this administrative regulation.

(2) Ex parte contact.

(a) Unless otherwise allowed by KRS 13B.100, there shall be no ex parte contact between a hearing officer assigned to an administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

(b) This administrative regulation shall not prohibit ex parte contact with staff on purely procedural matters not at issue in the case. This section shall not prohibit communications with staff regarding the status of a case.

(c) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall take every action required under KRS 13B.100, shall cause the parties to be notified of the contact, and shall inform the other parties to the action of their right to move for a recusal.

(d) The hearing officer may impose appropriate sanctions on a person who knowingly makes a prohibited ex parte contact, including, but not limited to deeming the person to have defaulted, striking all or part of that person's pleadings, claims, or defenses, denying any pending motions by the party, issuing a show cause order requiring the person to show why the hearing officer should not sanction the person, or taking such other actions as are appropriate.

Section 9. Service. (1) Unless the hearing officer otherwise orders, every order, every pleading subsequent to the document commencing the administrative action, every paper relating to discovery required to be served upon a party and every written motion, summons, notice, appearance, demand, and similar paper filed in the record shall be served upon each party to an administrative action.

(2) Service may be made by personal delivery of or by mailing a copy of the paper to the party served.

(a) Service by certified mail. Service may be accomplished by certified mail by placing a copy of the paper to be served in an envelope, addressing the envelope to the person to be served at his last known address, affixing adequate postage to and mailing the sealed envelope by certified mail, return receipt requested. Service by certified mail under this section is complete upon mailing. The agency shall immediately upon receipt mark all return receipts and returned mail served under this paragraph with the date the agency receives the receipt or the mail. The United States mail return receipt or returned mail shall be proof of the date of acceptance or refusal to claim a paper served by mail. The certificate of service required by subsection (5) of this section for papers to be filed in the record shall be evidence of the date of service. The proper address for the purposes of service by mail shall be the last known address of the person to be served. If the person to be served is a licensee or permittee of the agency, then the proper address for service of process shall include that person's last address of record in the agency's files.

(b) Service by regular mail. Service may be accomplished by regular mail in the same manner as for certified mail. Service by regular mail is effective upon mailing. The certificate of service required by subsection (5) of this section for papers to be filed in the record shall be evidence of the date of service.

(c) Service by personal delivery. Papers may be served by personal delivery by any person over eighteen (18) years of age authorized by law or administrative regulation to deliver them in person. Delivery within this administrative regulation means handing it to the party; or leaving it at the party's business address with the person in charge thereof; or, leaving it at the party's residence with a person eighteen (18) years of age or older residing therein. The person serving the papers in person shall fill out a certificate of service indicating the date and manner of service and whether service was offered and accepted or refused. The serving person shall return the endorsed certificate of service to the agency, which shall immediately file it in the record.

(3) Service on attorney. Whenever under these administrative regulations service is required or permitted to be made upon a party represented by an attorney of record in the administrative action, service may be made upon the attorney in the same manner as upon the represented party.

(4) Who is responsible for service. Unless the hearing officer orders otherwise, the person filing papers shall be responsible for serving those papers.

(5) Certificate of service. Whenever any pleading or other paper is served under these administrative regulations, the serving party shall file proof of the date and manner the filed paper was served

upon the other parties to the administrative action. Proof of service shall be by a certificate signed by the person who served the paper, or by any other proof satisfactory to the hearing officer. The certificate of service shall identify by name the persons served.

Section 10. Filing of Papers. (1) Papers required to be filed. All papers after the petition required to be served upon a party shall be filed with the agency either before service or within a reasonable time thereafter.

(2) Method of filing. Pleadings and other papers shall be filed with the agency when they are received and endorsed by the agency. The agency shall endorse the date of receipt on every paper filed in an action immediately upon receipt.

(3) Facsimile filings. Papers may be filed with the agency by telefacsimile machine at the telefacsimile telephone number listed for the agency on the summons. Parties filing by telefacsimile machine shall include a certificate that the paper is being filed by fax and the original paper is being filed by mail and shall immediately after faxing such a paper mail the original paper to the agency. The filing date of a paper sent by facsimile shall be the date the agency receives the original, unless the original is received within five (5) business days of the facsimile, in which case the filing date shall be the date the agency received the facsimile.

(4) Signature required. All papers filed in an administrative action must be signed by the filing person. The signature of the filing person or his authorized representative constitutes a certificate that the signing person has read the paper and that to the best of his knowledge, information and belief formed after reasonable inquiry, it is not interposed for any improper purpose. If a paper is signed in violation of this subsection, the hearing officer may strike the paper from the record, deem the party to have failed to file the paper and take any action allowed as a consequence of such failure, strike all or part of any pleading, claim or defense asserted in the filing, or bar an attorney violating this subsection from future participation in that administrative action, and recommend that the secretary bar that attorney from appearing in future administrative actions before the agency.

Section 11. Venue. Administrative hearings shall be conducted at the office of the agency, unless the hearing officer rules that this would place an undue hardship on one of the parties. In determining venue, the hearing officer shall consider the requirements of law, the convenience of the parties, the witnesses and the evidence.

Section 12. Time Computation. (1) Computation. In computing any period of time prescribed or allowed by order of the hearing officer or by administrative regulation, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Unless otherwise directed by the hearing officer, when the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

(2) Enlargement. When by administrative regulation or by order of the hearing officer an act is required or allowed to be done by a specified time, the hearing officer may, before the specified time expires order the period enlarged or, may upon motion made after the specified period expires, permit the act to be done where the failure to act was the result of excusable neglect. The hearing officer may not enlarge a time frame established by statute.

(3) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceeding within a period prescribed by order of the hearing officer or by administrative regulation after the service of a notice or other paper upon the party by mail, three (3) days shall be added to the prescribed period. This

provision shall not apply to the service of administrative summons, notices and petitions by mail.

Section 13. Amended and Supplemental Pleadings. (1) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one (1) to which no responsive pleading is permitted, he may so amend it at any time within five (5) days after it is served. Otherwise, a party may amend his pleading only by leave of the hearing officer or by written consent of the adverse party filed in the record. Leave to amend shall be freely given to achieve just, timely and inexpensive determinations of matters before the agency.

(2) Response to amended pleading. A party shall file a response to an amended pleading within the time remaining for response to the original pleading or within five (5) days after service of the amended pleading, whichever period may be longer, unless the hearing officer orders otherwise.

(3) Relation back of amendments. Whenever the claim or defense asserted in an amended pleading arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of filing of the original pleading.

(4) Supplemental pleadings. The hearing officer may upon his own initiative or upon motion of a party permit a party to file a supplemental pleading which sets forth transactions, occurrences or events which have happened since the date of a prior pleading. The hearing officer shall allow such supplemental filings upon reasonable notice and upon such terms as are just, and shall grant the adverse party leave to file a responsive pleading to the supplemented pleading.

Section 14. Prehearing Conferences and Orders. (1) General provisions. A hearing officer, upon the motion of any party, or upon the hearing officer's own initiative, may hold a prehearing conference in any administrative action assigned to him to consider any matter set forth in KRS 13B.070(1).

(2) Telephonic prehearing conferences. Prehearing conferences may be held by telephone upon agreement of all persons concerned. The persons to be involved in the telephonic conference shall place the conference call to the hearing officer.

(3) Prehearing conferences to be recorded. Any prehearing conference in which the hearing officer will hear or rule on motions, objections, or hear argument on or make intermediate rulings shall be recorded and made part of the record.

(4) Settlement conferences. A hearing officer may order a settlement conference to facilitate settlement discussions. The hearing officer assigned to the administrative action shall not be present during the course of a settlement conference in that administrative action. No statements or admissions made at the settlement conference for the purpose of settlement negotiations shall be admitted in evidence at a formal administrative hearing nor be used by the hearing officer in making any report and recommendation to the secretary. To facilitate the settlement conference, the hearing officer may order:

(a) That expedited discovery be had before the settlement conference;

(b) That the parties or their representatives appear at the settlement conference with settlement authority;

(c) That any party produce witnesses, documents or other discovery at the settlement conference.

(5) Prehearing conference orders. The hearing officer shall file a prehearing conference order in compliance with KRS 13B.070(2) after each prehearing conference which sets forth the date, place and attendees of the prehearing conference and sets out any rulings made by the hearing officer at the prehearing conference.

Section 15. Consolidation and Severance. (1) Consolidation. A

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hearing officer, on motion of a party or on his own, may consolidate any cases assigned to his docket upon a finding by the hearing officer that the cases concern common questions of law or fact, or have an identity of issues or witnesses, and that consolidation is appropriate according to reasonable administrative practice.

(2) Severance. A hearing officer in his own discretion or on motion of a party, may sever consolidated cases or claims in an administrative action for a separate administrative hearing.

Section 16. Subpoenas. (1) Issuance. Upon motion of a party, the hearing officer may issue subpoenas requiring the attendance and testimony of witnesses and the production of any tangible items in the possession or under the control of witnesses.

(2) Motion for subpoena. A motion for issuance of a subpoena shall be in writing, filed with the agency at least five (5) days before the hearing. The motion shall set forth the need for the subpoena and shall specify the name and address of the person to be subpoenaed, and the name, address and phone number of the party requesting a subpoena. If the subpoena requests the production of tangible items, the motion shall describe those items with particularity. Attached to the motion, the party requesting the subpoena shall attach completed subpoenas on forms provided by the agency.

(3) Quashing subpoenas. Any person subject to a subpoena may, before the time for compliance set forth in the subpoena, move the hearing officer to quash the subpoena on the grounds that it was not lawfully issued, is unreasonably broad in scope, or requires production of evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or violates an evidentiary privilege recognized in the courts of this Commonwealth. The hearing officer shall rule expeditiously on any motion to quash.

Section 17. Motion Practice. (1) General provisions.

(a) All requests for relief from a hearing officer shall be in the form of a motion. Unless otherwise provided by law or administrative regulation, a person may move at any time during an administrative action, orally or in writing for any relief within the authority and jurisdiction of the hearing officer.

(b) Motions and responses. All motions filed with the agency going to the merits of an administrative action shall state the grounds and supporting authority for the motion and the precise relief requested. Any party properly served with a motion may, within fifteen (15) days of the date of service of a motion, file a response stating grounds and supporting authorities for opposing the motion. No motion or response longer than twenty-five (25) pages in length shall be filed without prior leave of a hearing officer.

(c) Format of written motions. All written motions filed under this section shall be on eight and one-half (8 ½) inches by eleven (11) inches paper stock, shall be signed by the filing person and shall include the name, address, telephone number and telefax number of each person filing the motion. Motions shall not be side-bound or top bound with a binding that interferes with the inclusion of the papers or pleadings in the agency files, unless permitted by the hearing officer. All printed or typed motions shall be in type no smaller than ten (10) point nor closer than twelve (12) pitch. All written motions filed with the agency which are longer than fifteen (15) pages in length shall contain an introduction, a table of contents and authorities, an argument and a conclusion section in which the filing person asks for specific relief. Failure to comply with the requirements of this subsection may be grounds for denying a motion.

(d) Argument on motions. Any party making a motion may move for oral argument before the hearing officer on that motion. If the hearing officer grants oral argument on the motion, he shall record the oral argument and make the recording part of the record.

(2) Motion for more definite statement.

(a) If a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the responding party may move for a more definite statement before filing a

responsive pleading. The motion for more definite statement shall detail the defects complained of and shall set forth the details desired and explain how the details desired cannot be reasonably understood from the pleading. A hearing officer may on his own initiative require a party to file in the record a more definite statement of his allegations, claims, defenses and requested relief.

(b) If the hearing officer grants a motion for a more definite statement, the nonmoving party shall file an amended pleading setting forth the claims in the original pleading more definitely within ten (10) days of the hearing officer's order, or within such time as the hearing officer may order. If the nonmoving party does not timely file an amended pleading, the hearing officer may, upon motion, strike the pleading to which the motion was directed or make such order as the hearing officer deems just.

(3) Motion for recommendation on the pleadings. After the time for filing any responsive pleading has passed, but within such time as not to delay a formal administrative hearing, any party may move for a recommendation on the pleadings. If, on such motion, matters outside the pleadings are presented to the hearing officer, the hearing officer shall treat and determine the motion as one for summary disposition.

(4) Motion for summary disposition.

(a) Time and form of filing. At any time after an administrative action commences, a party may move for summary disposition of a claim in his favor. In moving for summary disposition, the moving party shall support any factual allegations with affidavits or citations to deposition testimony, answers to interrogatories, responses to requests to admit, documents or with other citations to the record.

(b) Standard. The hearing officer may grant a motion for summary disposition and recommend the secretary rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.

(c) Partial summary disposition. If the hearing officer grants a motion for summary disposition in part, the hearing officer shall, as part of his order granting summary disposition in part, set forth all facts that are not genuinely disputed. These facts shall be established for the purpose of any subsequent proceedings in the administrative action. Following a partial summary disposition, the hearing officer shall order such further proceedings as are appropriate.

Section 18. Directed Disposition. (1) Time and standard. At the close of the presentation of evidence by a party at an administrative hearing, an opposing party may move the hearing officer for a directed disposition to the secretary, stating the specific grounds therefor on the record. In ruling on the motion for directed disposition, the hearing officer shall consider all of the evidence in the record presented by the nonmoving party and shall draw all inferences therefrom in favor of the nonmoving party. If, after so considering the evidence, the hearing officer determines there is not substantial evidence appearing in the record upon which the secretary could grant the nonmoving party relief, the hearing officer shall grant the moving party's motion and shall recommend that the secretary deny the nonmoving party's request for relief.

(2) Motion for directed disposition not a waiver. A motion for a directed disposition is not a waiver of the right to an administrative hearing. A party who moves for a directed disposition at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having to reserve the right to do so and to the same extent as if the motion had not been made.

Section 19. Evidence. (1) General. The hearing officer shall admit evidence in the record in accordance with KRS 13B.090 and reasonable administrative practice.

(2) Separation of witnesses; cumulative testimony. The hearing officer may on his own motion or motion of a party, separate the witnesses while testimony is being offered, and may limit cumulative

testimony by any witness.

(3) Proffers of proof. Upon the exclusion of evidence offered for the record, the hearing officer may allow proffers of the excluded proof to be placed in the official record in any expeditious manner, including but not limited to allowing such evidence in the form of testimony, affidavits, summaries, excerpts or documents. Proffers of proof shall be placed in the record outside the presence of the hearing panel, if any, and shall not be considered part of the record for the purpose of rendering a recommended order.

(4) Documentary evidence. The hearing officer may admit documentary evidence in the record in the form of a copy or excerpt if the original document is not available. Any party to the proceeding shall have the right to compare the copy or excerpt with the original prior to the copy or excerpt being admitted in to the record.

Section 20. Recording Proceedings; Transcripts; Exhibits. (1) Recording of proceedings. All testimony, proffers of proof, oral motions, objections and rulings thereon in an administrative action shall be recorded verbatim stenographically, electromechanically or by other means.

(2) Proceedings conducted by electronic means. Upon the filing of a signed written agreement of the parties, any administrative hearing may be conducted in whole or in part by telephone, television or other electronic means in accordance with KRS 13B.080(7). If any part of a hearing is conducted by electronic means for which there is a charge, each party shall bear a pro rata portion of the cost of conducting the proceedings electronically, or shall bear such costs as the hearing officer deems just. Any part of a hearing conducted by electronic means shall be recorded stenographically or by electro-mechanical means or by other means. Any electromechanical record of a hearing conducted by electronic means shall be filed in the record.

(3) Transcript of proceeding. A hearing officer may, in his discretion, order a transcript be made of all or a portion of any recording of an administrative action assigned to that hearing officer. The agency shall bear the cost of a transcript ordered by the hearing officer.

(4) Use of transcript. No party may cite to, quote or otherwise rely upon a transcript of a proceeding in any paper filed in the record, unless a complete copy of that transcript is also in the record. Any party may file a transcript cited, quoted or relied upon at the same time that party files the paper referring to the transcript. Failure to file a transcript as required by this subsection shall be grounds for denying a motion, or striking from the record all or part of a motion, memorandum, pleading or other paper violating this subsection.

(5) Exhibits. Following the close of the formal administrative hearing, the agency shall retain the record, including all exhibits introduced at the administrative hearing, for at least five (5) years. After five (5) years, or the time for all appeals has expired or the final appeal has been decided, the agency shall notify the parties to the administrative action that they must retrieve their exhibits by a date certain. If the parties do not retrieve their exhibits by the date set by the agency, the agency may dispose of the exhibits pursuant to the agency's records retention procedures.

Section 21. Default. (1) Default on failure to comply with order. If a party fails to timely comply with an order of a hearing officer or a requirement of these administrative regulations, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his right to an administrative hearing and why the hearing officer should not immediately recommend the secretary enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the secretary enter a final order in conformity with the relief requested by the opposing party in the administrative action.

(2) Default on failure to appear at hearing. If a party fails to

appear at a formal administrative hearing, the hearing officer may deem that party to have waived his right to a formal administrative hearing and may immediately recommend the secretary enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulting party.

(3) Default recommendation limits. Upon a party's failure to timely comply with a hearing officer's order, the hearing officer may recommend the secretary grant any relief to which the opposing party is entitled. Upon a party's failure to appear at a formal administrative hearing, the hearing officer shall recommend the secretary grant the relief requested in the appropriate pleading.

(4) Default set aside on good cause shown. A hearing officer may, before the time for filing exceptions with the secretary has run, set aside a recommendation by default under this section for good cause shown.

Section 22. Posthearing Procedures; Exceptions; Jurisdiction. (1) Posthearing memoranda. At the conclusion of an administrative hearing, the hearing officer may, within his discretion, order the parties to submit post-hearing memoranda or draft recommended orders for the secretary. If the hearing officer orders such filings, he may allow response times for each side. The hearing officer may in his discretion hear oral argument on posthearing filings. The record of the formal administrative hearing shall not close until after the time has run for all post-hearing filings.

(2) Posthearing order. As soon as practicable after the conclusion of the administrative hearing, the hearing officer shall file an order that memorializes the time, place and duration of the hearing of the administrative action and recites appearances by counsel and parties. The hearing officer shall order at the close of the hearing whether the hearing will be transcribed, and shall set this forth in the posthearing order. The posthearing order shall set a date for the final close of the record.

(3) Transmission of official record. Within five (5) days after the posthearing order is filed, or the transcript of the hearing is received by the agency if a hearing officer orders a transcript, the agency shall compile the official record, as defined in KRS 13B.130, and shall transmit a dated, certified copy of the record to the hearing officer. The hearing officer shall file a recommended order within sixty (60) days of the record's certified date.

(4) Exceptions. Any party filing exceptions to a hearing officer's recommended order as provided for in KRS 13B.110(4) shall file with their exceptions a draft final order for the secretary. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The party filing exceptions shall serve a copy on the hearing officer.

(5) Jurisdiction. The hearing officer shall retain jurisdiction over the administrative action until the time for filing exceptions under KRS 13B.110(4) has run. After that time, the administrative action shall be submitted to and within the sole jurisdiction of the secretary.

(6) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the secretary. The recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or refuse to adopt the report and recommended order of the hearing officer and issue its own written order based on the record as a whole.

(7) After completion of the hearing and filing of exceptions, the secretary shall notify the applicant in writing, certified mail with return receipt requested, of the final decision. If any extension of time is

granted by the secretary for a hearing officer to complete his report, the secretary shall notify all parties at the time of the granting of the extension.

(8) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

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

Section 23. Appeal Rights. Any person aggrieved by the secretary's final order shall have recourse to the Franklin Circuit Court.

~~[Section 1. Requests for Reconsideration or Hearing. (1) Any person not previously heard in connection with a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim, who considers himself aggrieved by such determination, may request in writing that the determination be reconsidered. The writing shall set forth the grounds for the request and shall be accompanied by any documentation or other competent evidence related to the disputed issue that was not previously considered by the commission staff. The right to request a reconsideration of the determination shall be limited to a period of thirty (30) days after the applicant has had actual notice of the commission's action. The commission staff shall evaluate the documents and other competent evidence after receipt of the request. The commission staff shall resubmit the claim to the commission if the documentation or evidence, accompanying the request for reconsideration, warrants reconsideration of a prior recommendation on the issue. If the reconsideration, by the commission staff or the commission, fails to resolve the applicant's concerns the applicant may request a hearing on the determination pursuant to subsection (2) of this section.~~

~~(2) Any person not previously heard in connection with a determination of the commission or the executive director denying eligibility for participation in the fund or payment of a claim, who considers himself aggrieved by such final determination, may request in writing that a hearing be conducted by the commission. The writing shall set forth the grounds for the request and the relief sought. The commission, the executive director or a person designated by the commission shall be the hearing officer. The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice of the action, or could reasonably have had notice. A subsection (1) of this section reconsideration is not required prior to requesting a hearing pursuant to this subsection. Requests for reconsideration under subsection (1) of this section shall not prejudice the right of a party to seek a hearing under this subsection, except as specifically set out in this administrative regulation. Unless the request is frivolous, the commission shall schedule a hearing before the commission not less than twenty-one (21) days after receipt of the request.~~

~~(3) The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for the granting of the hearing.~~

~~(4) Upon receipt of notice of hearing, by the hearing officer, summons shall issue upon petition directing the commission to send all pertinent portions of the commission file related to the determination before the hearing officer, properly bound to the clerk of the administrative hearing office after certifying that such record is the total content of commission file documents pertaining to the issue before the hearing officer and that said record is the basis for the commission's determination. The hearing officer shall review the commission record the commission's determination.~~

Section 2. The Burden of Persuasion. The person requesting the

hearing shall have the burden of persuasion to establish a case for the relief sought. The standard to meet the burden is a preponderance of the evidence.

Section 3. Documentary Evidence. Documentary evidence which is existing or obtained by any party during the time a claim is pending before the commission, and is not submitted to the commission, by such party, prior to the determination or reconsideration by the commission shall not be admitted into the hearing record in the absence of extraordinary circumstances, unless by agreement of the parties.

Section 4. Prehearing Conference. Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail with return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation, agreed settlement, consent order, or default for nonappearance.

Section 5. Administrative Hearing Procedure. (1) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing in accordance with reasonable administrative practice.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts.

(3) The hearing officer shall provide for the hearing to be stenographically, mechanically or electronically recorded. It is within the hearing officer's discretion to require official transcripts. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon completion of the hearing process upon payment of the actual cost of reproducing the original except as provided in KRS 224.10-210 or 224.10-212, and 400-KAR 1:060. The commission may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(4) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the commission. The recommended order shall contain the appropriate findings of fact and conclusions of law. If the commission finds upon written request of the hearing officer that additional time is needed, then the commission may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the

recommended order. The commission may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or refuse to adopt the report and recommended order of the hearing officer and issue its own written order based on the record as a whole.

(5) After completion of the hearing and filing of exceptions, the commission shall notify the applicant in writing, certified mail with return receipt requested, of the final decision of the commission. If any extension of time is granted by the commission for a hearing officer to complete his report, the commission shall notify all parties at the time of the granting of the extension.

(6) The commission shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

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

(8) There shall be no ex parte communications between a hearing officer and parties to the action.

(9) Any person aggrieved by a final order of the commission may have recourse to the Franklin Circuit Court.]

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 19, 1996, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this administrative regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended administrative regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: The tank owners or operators are financially responsible for \$1,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks. Cost should not rise for the public.

2. Continuing costs or savings: The amendments should not raise cost to the public.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was \$1.3 million. The cost to the fund will increase as we are now required to act as docket coordinator.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund is required to collect, review, maintain, and process hearing files.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) KRS Chapter 13B required three amendments. A recent reorganization moving this agency to the Public Protection and Regulation Cabinet also required amendments to this section.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended administrative regulation provides the due process procedures provided for in KRS Chapter 13B.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this administrative regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will most likely contain more tanks.

(b) Environmental: None

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: KRS Chapter 13B may have some overlapping provisions, but the administrative regulations are consistent with the statutory provisions.

(a) Necessity of proposed administrative regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the administrative regulation: Amendments guarantee due process standards.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement. Was tiering applied: No. Tiering was not necessary.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. KRS Chapter 13B.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements,

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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.

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. This administrative regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

JUSTICE CABINET Department of Corrections (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, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations 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 conforms with those provisions.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures", (October 14, 1996 [August 12, 1996] Edition), Department of Corrections, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Department of Corrections Policies and Procedures include:

- 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 ~~((Amended 8/13/96))~~
- 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
- 9.5 Execution
- 9.6 Contraband
- 9.7 Storage, Issue and Use of Weapons Including Chemical Agents
- 9.8 Search Policy
- 9.9 Transportation of Inmates
- 9.10 Security Inspections
- 9.11 Tool Control
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates (Amended 10/14/96)
- 11.3 Special Diet Procedures (Amended 10/14/96)
- 11.4 Alternative Diet (Added 10/14/96)
- 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
- 13.7 Involuntary Psychotropic Medication Policy
- 13.9 Dental Services
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures (Amended 10/14/96)
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties
- 15.3 Meritorious Good Time
- 15-05-01 Restoration of Forfeited Good Time
- 15.6 Adjustment Procedures and Programs
- 15.7 Inmate Account Restriction
- 15.8 Unauthorized Substance Abuse Testing
- 16.1 Inmate Visits ~~((Amended 8/13/96))~~
- 16.2 Inmate Correspondence (Amended 10/14/96)
- 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
- 18.1 Classification of the Inmate
- 18.5 Custody and Security Guidelines
- 18.7 Transfers
- 18.9 Out-of-state Transfers
- 18-10-01 Parole 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
- 18.17 Interstate Agreement on Transfers
- 18.18 International Transfer of Inmates
- 19.1 Government Services Projects
- 19.2 Community Services Projects
- 19.3 Inmate Wage Program

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| | | | |
|----------|--|----------|---|
| 20.1 | Educational Programs and Educational Good Time | | Parole Violators |
| 21.1 | Staffing Pattern for the First Incarceration Shock Treatment Program (FIST) | 27-22-01 | Fugitive Unit - Apprehensions |
| 21.2 | Phase I: Program Selection Assessment Criteria | 27-22-02 | Fugitive Unit - Transportation of Fugitives |
| 21.3 | Program Schedule - Phase II and Phase III | 27-23-01 | In-state Transfer |
| 21.4 | Platoon Size and Composition | 27-24-01 | Closing Supervision Report |
| 21.5 | Physical Conditions Program Component | 27-24-02 | Reinstatement of Clients to Active Supervision |
| 21.6 | Group and Individual Counseling | 27-25-01 | Application for Final Discharge from Parole |
| 21.7 | Drug and Alcohol Abuse Counseling and Treatment | 27-26-01 | Assistance to Former Clients and Dischargees |
| 21.8 | Work Programs Component | 27-27-01 | Restoration of Civil Rights |
| 21.9 | Education and Life Management | 27-28-01 | Firearms/Explosives: Application for Relief from Disability |
| 21.10 | Auxiliary Services | 27-29-01 | Parole Review Dates Modification |
| 21.11 | Offenses and Penalties | 28-01-01 | Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments) |
| 22.1 | Privilege Trips | | |
| 23.1 | Religion | 28-01-02 | Probation and Parole Investigation Reports (Administrative Responsibilities) |
| 25.1 | Gratuities | | |
| 25.2 | Public Official Notification of Release of an Inmate | 28-01-03 | Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure) |
| 25.3 | Prerelease Program | | |
| 25.4 | Inmate Furloughs | 28-01-04 | Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules) |
| 25.6 | Community Center Program | | |
| 25.7 | Expedient Release | 28-01-05 | Probation and Parole Investigation Reports (Computation of Jail Custody Credit) |
| 25.8 | Extended Furloughs | | |
| 25.10 | Administrative Release of Inmates | 28-01-06 | Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts) |
| 25.11 | Victim Notification | | |
| 27-01-01 | Probation and Parole Procedures | 28-01-07 | Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule) |
| 27-02-01 | Duties of Probation and Parole Officers | | |
| 27-03-01 | Workload Formula Supervisor/Staff Ratio | 28-01-08 | Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule) |
| 27-05-01 | Testimony, Court Demeanor and Availability of Legal Services | 28-01-09 | Release of Information of Factual Content on Presentence/Postsentence Investigation Reports |
| 27-06-01 | Availability of Supervision Services | | |
| 27-06-02 | Equal Access to Services | 28-02-01 | Expedient Release Program |
| 27-07-01 | Cooperation with Law Enforcement Agencies | 28-03-01 | Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release |
| 27-08-01 | Use of Force | | |
| 27-09-01 | Kentucky Community Resources Directory | 28-04-01 | Furlough Verifications |
| 27-11-01 | Intensive Supervision | 28-05-01 | Out-of-state Investigations. |
| 27-12-01 | Supervision: Case Classification | | |
| 27-12-02 | Risk 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 | | |

DOUG SAPP, Commissioner

APPROVED BY AGENCY: October 14, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 21, 1996 at 9 a.m., in the 5th Floor Conference Room of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Staff Attorney Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and visitors to all state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

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- (a) Direct and indirect costs or savings:
1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: Policy revisions.
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.
- (6) Economic impact, including effects of economic activities arising from administrative regulation, on:
- (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
- (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: N/A
- (9) 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: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (10) Any additional information or comments: None
- (11) TIERING: Is 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.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections [commissioner] to promulgate 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 establishes the policies and procedures for the Kentucky State Penitentiary.

Section 1. (1)(a) Kentucky State Penitentiary policies and procedures, October 14, 1996 [March 13, 1996] are incorporated by reference.

(b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday

through Friday, 8 a.m. to 4:30 p.m.

(2) Kentucky State Penitentiary policies and procedures include:

| | |
|--------------------------|---|
| KSP 01-02-01 | Public Information and Media Communications |
| KSP 020000-15 | Legal Assistance |
| KSP 02-01-01 | Inmate Commissary Program |
| KSP 02-08-01 | Inventory Records and Control |
| KSP 02-11-01 | Requisition and Purchase of Supplies and Equipment |
| KSP 02-12-01 | Inmate Personal Funds [Amended 3/13/96] |
| KSP 05-02-01 | Management Information System |
| KSP 06-01-01 | Inmate Records |
| KSP 09-08-01 | Searches and Preservation of Evidence |
| KSP 10-02-01 | Special Management Units: Assignment, Classification Review and Release |
| KSP 10-02-05 | Special Security Unit |
| KSP 10-04-01 | Special Needs Inmates [Amended 3/13/96] |
| KSP 100000-03 | Disposition of Unauthorized Property |
| KSP 100000-08 | Behavioral Counseling Record |
| KSP 100000-20 | Legal Services Program (Deleted 10/14/96) |
| KSP 100000-21 | Photocopies for Nonindigent Inmates with Special Court Deadlines |
| KSP 11-03-01 | Therapeutic Diets |
| KSP 11-06-01 | Food Service Inspections |
| KSP 120000-11 | Religious Services - Staffing |
| KSP 120000-18 | Religious Services - Religious Programming |
| KSP 120000-20 | Marriage of Inmates |
| KSP 13-01-01 | Pharmacy Procedures |
| KSP 13-02-01 | Hospital Services |
| KSP 13-02-02 | Sick Call |
| KSP 13-02-03 | Health Evaluations |
| KSP 13-02-04 | Emergency Medical Procedure |
| KSP 13-02-05 | Consultations |
| KSP 13-02-08 | Medical Records |
| KSP 13-02-09 | Psychiatric and Psychological Services |
| KSP 13-02-11 | Psychological and Psychiatric Treatment Upon Release |
| KSP 13-02-12 | Dental Services for Special Management Units |
| KSP 13-02-13 | Optometric Services |
| KSP 14-03-01 | Marriage of Inmates |
| KSP 14-04-01 | <u>Legal Services (Added 10/14/96) (Renumbered from 100000-20)</u> |
| KSP 14-06-01 | Inmate Grievance Procedure |
| KSP 15-01-01 | Inmate Grooming and Dress Code |
| KSP 15-03-01 | Award of Meritorious Good Time |
| KSP 15-06-01 | Due Process/Disciplinary Procedures |
| KSP 15-10-01 | Discharge of Inmates by Shock Probation (Deleted 10/14/96) |
| KSP 16-01-01 | Visiting Program |
| KSP 16-02-01 | Inmate Correspondence |
| KSP 16-03-02 | Inmate Telephone Access |
| KSP 16-04-01 | Inmate Packages |
| KSP 17-01-01 | Inmate Personal Property |
| KSP 17-01-03 | Procedures for Providing Clothing, Linens and Other Personal Items |
| KSP 17-01-04 | Property Room, Clothing Storage and Property Inventory Control |
| KSP 18-01-01 | General Guidelines and Functions of the Classification Document |
| KSP 18-01-02 | Functions of the Classification Committee |
| KSP 18-06-01 | Classification Document |
| KSP 18-10-01 | Parole Progress Report |
| KSP 18-11-01 | Transfers to Kentucky Correctional Psychiatric Center (KCPC) |
| KSP 18-15-01 | Protective Custody Unit |
| KSP 19-04-01 | Inmate Work Programs: Safety Inspections of Inmate Work Locations |

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KSP 19-04-02 Unit Classification Committee: Inmate Work Assignments
 KSP 19-05-01 Correctional Industries
 KSP 20-04-01 Educational Programs
 KSP 22-04-01 Arts and Crafts Program
 KSP 25-04-01 Inmate Furloughs
 KSP 25-08-01 Extended Furloughs
 KSP 25-10-01 Discharge of Inmates by Shock Probation
 (Amended 10/14/96) (Renumbered from 15-10-01)

DOUG SAPP, Commissioner

APPROVED BY AGENCY: October 3, 1996

FILED WITH LRC: October 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, five (5) 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 this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2204, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 305 employees of the correctional institutions, 809 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is 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.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (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, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections (commissioner) to promulgate 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. This administrative regulation establishes the policies and procedures for the Northpoint Training Center.

Section 1. (1)(a) Northpoint Training Center policies and procedures, October 14 (May 13), 1996, are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Northpoint Training Center policies and procedures include:

| | |
|--------------|--|
| NTC 01-05-01 | Extraordinary Occurrence Reports |
| NTC 01-10-01 | Legal Assistance for Corrections 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 | Accounting for Appropriations and Expenditures of Funds |
| NTC 02-04-01 | Internal Control and Monitoring of Accounting Procedures |

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|---------------------|---|--------------|--|
| NTC 02-07-02 | Chapel Fund | NTC 14-03-02 | Board of Claims [(Amended 5/13/96)] |
| NTC 02-08-01 | Inmate Canteen [(Amended 5/13/96)] | NTC 15-01-01 | Restoration of Forfeited Good Time [(Amended 5/13/96)] |
| NTC 02-10-01 | Insurance Coverage | NTC 15-02-01 | Due Process/Disciplinary Procedures |
| NTC 02-12-01 | Inmate Accounts [(Amended 5/13/96)] | NTC 15-02-02 | Extra Duty Assignments [(Amended 5/13/96)] |
| NTC 04-01-01 | Training and Staff Development | NTC 15-02-03 | Hearing Officer [(Amended 5/13/96)] |
| NTC 04-04-01 | Firearms and Chemical Agents Training | NTC 15-03-01 | Rules for Inmates Assigned to Outside Detail |
| NTC 06-01-01 | Offender Records | NTC 15-03-02 | Rules and Regulations for General Population Dormitories |
| NTC 06-01-02 | Records - Release of Information [(Amended 5/13/96)] | NTC 15-04-01 | Inmate Identification [(Amended 5/13/96)] |
| NTC 06-01-03 | Taking Offender Record Folders onto the Yard | NTC 15-05-01 | <u>Drug Abuse and Intoxicants Testing (Added 10/14/96)</u> |
| NTC 08-05-01 | The Fire and Safety Officer | NTC 16-01-01 | Mail Regulations |
| NTC 08-05-02 | Fire Procedures | NTC 16-02-01 | Visiting <u>(Amended 10/14/96)</u> |
| NTC 08-05-03 | Fire Prevention | NTC 16-02-02 | Extended and Special Visits |
| NTC 08-05-04 | Storage of Flammables and Dangerous Chemicals and Their Use | NTC 16-02-03 | Honor Dorm and Outside Detail Dorm Visiting |
| NTC 08-07-01 | Safety Standards | NTC 16-02-04 | Controlled Visitation |
| NTC 10-01-01 | Special Management Unit | NTC 16-03-01 | Inmate Furloughs [(Amended 5/13/96)] |
| NTC 10-03-01 | Protective Custody | NTC 16-05-01 | Telephone Use and Control [(Amended 5/13/96)] |
| NTC 11-03-01 | Food Services: General Guidelines | NTC 17-01-01 | Personal Property Control [(Amended 5/13/96)] |
| NTC 11-04-02 | Menu, Nutrition and Special Diets | NTC 17-01-02 | Authorized Inmate Personal Property [(Amended 5/13/96)] |
| NTC 11-05-02 | Health Standards and Regulations for Food Service Employees <u>(Amended 10/14/96)</u> | NTC 17-01-03 | Unauthorized Inmate Property [(Amended 5/13/96)] |
| NTC 11-06-01 | Inspection and Sanitation | NTC 17-01-04 | Disposition of Unauthorized Property [(Amended 5/13/96)] |
| NTC 11-07-01 | Purchasing and Storage of Food Products <u>(Amended 10/14/96)</u> | NTC 17-01-05 | State Issue and Required Inmate Clothing |
| NTC 12-01-01 | Institutional Inspection | NTC 17-03-01 | Assessment and Orientation |
| NTC 12-02-01 | Personal Hygiene for Inmates; Clothing and Linens | NTC 18-01-01 | Preparole Progress Report [(Amended 5/13/96)] |
| NTC 12-02-02 | Issuance of Personal Hygiene Products | NTC 18-02-01 | Classification [(Amended 5/13/96)] |
| NTC 12-07-01 | Grooming and Hair Care Standards | NTC 18-02-02 | Classification - 48 Hour Notification [(Amended 5/13/96)] |
| NTC 13-01-01 | Emergency Medical Care Plan | NTC 18-03-01 | Special Notice Form [(Amended 5/13/96)] |
| NTC 13-01-02 | Emergency and Specialized Health Services | NTC 18-05-01 | Transfers of Inmates [(Amended 5/13/96)] |
| NTC 13-02-01 | Administration and Authority for Health Services | NTC 18-05-02 | Transfer of Inmates to Kentucky Correctional Psychiatric Center [(Amended 5/13/96)] |
| NTC 13-03-01 | Sick Call and Pill Call [(Amended 5/13/96)] | NTC 19-01-01 | Inmate Work Program |
| NTC 13-04-01 | Utilization of Pharmaceutical Products [(Amended 5/13/96)] | NTC 19-01-03 | Temporary Leave from Job Assignment |
| NTC 13-05-01 | Dental Services [(Amended 5/13/96)] | NTC 19-02-01 | Correctional Industries [(Amended 5/13/96)] |
| NTC 13-05-03 | Dental Radiation Levels [(Amended 5/13/96)] | NTC 19-02-02 | Guidelines for Correctional Industries [(Amended 5/13/96)] |
| NTC 13-05-04 | Attest Steam Incubator [(Amended 5/13/96)] | NTC 20-01-01 | Educational Programs [(Amended 5/13/96)] |
| NTC 13-06-01 | Licensure and Training Standards [(Amended 5/13/96)] | NTC 20-02-02 | Live Work Projects in Vocational School Classes |
| NTC 13-07-01 | Provisions for Health Care Delivery [(Amended 5/13/96)] | NTC 21-01-01 | Library Services |
| NTC 13-08-01 | Medical and Dental Records [(Amended 5/13/96)] | NTC 22-03-01 | Conducting Inmate Organizational Meetings and Programs |
| NTC 13-09-01 | Special Diets [(Amended 5/13/96)] | NTC 23-01-01 | Religious Services |
| NTC 13-11-01 | Inmate Health Screening and Evaluation [(Amended 5/13/96)] | NTC 23-03-01 | Marriage of Inmates |
| NTC 13-12-01 | Special Health Care Programs [(Amended 5/13/96)] | NTC 24-04-01 | Honor Status |
| <u>NTC 13-13-01</u> | <u>Inmate Self-administration of Medication (Added 10/14/96)</u> | NTC 24-05-01 | Unit Management |
| NTC 13-17-01 | Inmates Assigned to Health Services [(Amended 5/13/96)] | NTC 25-01-01 | Release Preparation Program |
| NTC 13-19-01 | Mental Health Care Program [(Amended 5/13/96)] | NTC 25-01-02 | Temporary Release/Community Center Release |
| NTC 13-19-03 | Suicide Prevention and Intervention Program [(Amended 5/13/96)] | NTC 25-01-03 | Graduated Release |
| NTC 13-20-01 | Infectious Disease <u>(Amended 10/14/96)</u> | NTC 25-02-01 | Funeral Trips and Bedside Visits |
| NTC 13-20-02 | Infection Control <u>(Amended 10/14/96)</u> | NTC 25-03-01 | Inmate Release Procedure |
| NTC 13-20-03 | Disposal of Biohazard Waste [(Amended 5/13/96)] | NTC 26-01-01 | Citizen Involvement and Volunteer Services Program |
| NTC 13-21-01 | Vision Care and Optometry Services [(Amended 5/13/96)] | | |
| NTC 13-22-01 | Informed Consent [(Amended 5/13/96)] | | |
| NTC 13-23-01 | Special Needs Inmates [(Amended 5/13/96)] | | |
| NTC 14-01-01 | Legal Services Program [(Amended 5/13/96)] | | |
| 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 [(Amended 5/13/96)] | | |

DOUG SAPP, Commissioner

APPROVED BY AGENCY: October 4, 1996

FILED WITH LRC: October 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, five (5) 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 this administrative

regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2204, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 268 employees of the correctional institutions, 949 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is 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.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate 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 establishes the policies and procedures for the Green River Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) Green River Correctional Complex Policies and Procedures, October 14 [July 12], 1996, is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(2) Green River Correctional Complex Policies and Procedures include:

- GRCC 01-05-01 Procedures Officer
- GRCC 01-09-01 Duty Officer Responsibilities
- GRCC 01-10-01 Smoking: GRCC Facility
- GRCC 01-12-01 Public Information and Media Communication [~~Added 7/12/96~~]
- GRCC 02-01-02 Fiscal Management Accounting Procedures
- GRCC 02-01-03 Fiscal Management Agency Funds
- GRCC 02-02-01 Fiscal Management: Budget
- GRCC 02-03-01 Fiscal Management: Audits
- GRCC 02-06-01 Inmate Canteen
- GRCC 02-07-01 Inmate Personal Funds
- [~~GRCC 04-01-01 Employee Training and Staff Development (Deleted 10/14/96)~~]
- GRCC 05-01-01 Information System
- GRCC 06-01-01 Offender Records
- GRCC 08-03-01 Escape Plan
- GRCC 08-05-01 Emergency Squad: Selection, Training and Evaluation
- GRCC 08-06-01 Response Units
- GRCC 08-07-01 Natural Disaster/Earthquake
- GRCC 09-02-01 Drug Abuse Testing
- GRCC 09-03-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power
- GRCC 09-04-01 Inmate Death
- GRCC 09-05-01 Construction Crew Entry and Exit Guidelines
- GRCC 09-06-01 Entry and Exit Procedures
- [~~GRCC 09-07-01 Institutional Inspections (Deleted 10/14/96)~~]
- GRCC 09-08-01 Storage, Issue and Use of Chemical Agents
- GRCC 09-09-01 Contraband Control: Collection, Preservation and Disposition of Contraband and Identification of Physical Evidence
- GRCC 09-10-01 Emergency Release from Locked Areas

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GRCC 10-01-01 Special Management Unit
 GRCC 11-01-01 Food Service Guidelines
 GRCC 11-02-01 Food Service: Security
 GRCC 11-03-01 Dining Room Guidelines (Amended 10/14/96)
 GRCC 11-04-01 Food Service: Meals
 GRCC 11-04-02 Food Service: Menu, Nutrition and Special Diets
 GRCC 11-06-01 Health Requirements of Food Handlers
 GRCC 11-07-01 Food Service: Inspections and Sanitation
 GRCC 11-08-01 Food Service: Purchasing, Storage and Farm Products
 GRCC 12-01-01 Clothing, Bedding, Hygiene Supplies and Barber Services
 GRCC 13-01-01 Organization of Medical Services
 GRCC 13-02-01 Medical Services: Sick Call, Physician's Clinics and Pill Call
 GRCC 13-02-03 Continuing of Care: Health Evaluations, Intra-System Transfer and Individual Treatment Plans ~~[(Added 7/12/96)]~~
 GRCC 13-03-01 Use of Pharmaceutical Products
 GRCC 13-04-01 Health Records
 GRCC 13-04-02 Psychological and Psychiatric Reports
 GRCC 13-05-01 Management of Serious and Infectious Diseases
 GRCC 13-06-01 Mental Health Services ~~[(Added 7/12/96)]~~
 GRCC 13-07-01 Medical Restraints
 GRCC 13-08-01 Eye Care
 GRCC 13-09-01 Dental Care
 GRCC 13-10-01 Transfers and Medical Profiles ~~[(Added 7/12/96)]~~
 GRCC 13-11-01 Informed Consent ~~[(Added 7/12/96)]~~
 GRCC 13-12-01 Infirmary Care ~~[(Added 7/12/96)]~~
 GRCC 13-13-01 Inmate Self-administration of Medication (Added 10/14/96)
 GRCC 13-15-01 Health Education Program and Detoxification (Added 10/14/96)
 GRCC 14-01-01 Inmate Rights and Responsibilities
 GRCC 14-02-01 Legal Services Program
 GRCC 15-01-01 GRCC Adjustment Program and Procedures
 GRCC 16-01-01 Inmate Visiting (Amended 10/14/96)
 GRCC 16-02-01 Inmate Correspondence and Privilege Mail
 GRCC 16-03-01 Inmate Telephone Communications
 GRCC 16-04-01 Inmate Packages
 GRCC 17-01-01 GRCC Inmate Property Control
 GRCC 17-02-01 GRCC Inmate Receiving and Orientation Process
 GRCC 17-03-01 Procedure for Sending Televisions to Outside Dealer for Repair
 GRCC 18-01-01 Inmate Classification
 GRCC 18-02-01 Meritorious Housing
 GRCC 18-02-02 Meritorious Visitation Program
 GRCC 19-01-01 Inmate Work Programs (Amended 10/14/96)
 GRCC 20-01-01 Educational Programs
 GRCC 21-01-01 Library Services
 GRCC 22-01-01 Recreation Programs
 GRCC 22-02-01 Inmate Organizations
 GRCC 22-05-01 Inmate Photo Project ~~[(Added 7/12/96)]~~
 GRCC 23-02-01 Death or Hospitalization of an Inmate's Family Member and Notification of Inmates
 GRCC 24-01-01 Social Services and Counseling Program
 GRCC 25-01-01 Prerelease Program
 GRCC 25-01-02 Inmate Release Program (Added 10/14/96)
 GRCC 25-02-01 Parole Hearing Procedure ~~[(Added 7/12/96)]~~

DOUG SAPP, Commissioner

APPROVED BY AGENCY: October 3, 1996

FILED WITH LRC: October 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, five

(5) 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 this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2204, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 213 employees of the correctional institutions, 614 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is 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 Vehicle Enforcement
(Amendment)

601 KAR 1:005. Safety administrative regulations.

RELATES TO: KRS Chapters 138, 281, 49 CFR Parts 40, 382-383, 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.730, 281.750, 49 CFR Parts 40, 382-383, 390-397

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. This administrative regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using a vehicle:

- (a) To transport agricultural products from his farm;
- (b) To transport farm machinery or farm supplies to his farm; or
- (c) Generally thought of as farm machinery; and
- (d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Load limit" means the seating capacity established by the manufacturer for a passenger-carrying vehicle plus an additional twenty-five (25) percent.

Section 2. Governing Federal Regulations. All commercial motor vehicles and their operators meeting the definitions set forth in 49 CFR 390.5 operated for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this administrative regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) 49 CFR Part 40, as effective October 1, 1996, Procedures for Transportation Workplace Drug Testing Programs;

(2) 49 CFR Part 382, as effective October 1, 1996, Controlled Substances and Alcohol Use and Testing [~~as amended at 61 Fed. Reg. 9567, March 8, 1996 and at 61 Fed. Reg. 14677, April 3, 1996~~];

(3) 49 CFR Part 383, as effective October 1, 1996, Commercial Driver's License Standards; Requirements and Penalties [~~as amended at 61 Fed. Reg. 9567, March 8, 1996 and at 61 Fed. Reg. 14677, April 3, 1996~~];

(4) 49 CFR Part 390, as effective October 1, 1996, General [~~as amended at 61 Fed. Reg. 9567, March 8, 1996 and at 61 Fed. Reg. 14677, April 3, 1996~~];

(5) 49 CFR Part 391, as effective October 1, 1996, Qualifications of Drivers [~~as amended at 61 Fed. Reg. 1843, January 24, 1996 and at 61 Fed. Reg. 9567, March 8, 1996, at 61 Fed. Reg. 13338, March 26, 1996 and at 61 Fed. Reg. 14677, April 3, 1996~~];

(6) 49 CFR Part 392, as effective October 1, 1996, Driving of Motor Vehicles [~~as amended at 61 Fed. Reg. 9567, March 8, 1996 and at 61 Fed. Reg. 14677, April 3, 1996~~];

(7) 49 CFR Part 393, as effective October 1, 1996, Parts and Accessories Necessary for Safe Operation [~~as amended at 61 Fed. Reg. 1843, January 24, 1996 and at 61 Fed. Reg. 46245, September 6, 1996~~];

(8) 49 CFR Part 395, as effective October 1, 1996, Hours of Service of Drivers [~~as amended at 61 Fed. Reg. 14677, April 3, 1996~~];

(9) 49 CFR Part 396, as effective October 1, 1996, Inspection, Repair and Maintenance; and

(10) 49 CFR Part 397, as effective October 1, 1996, Transportation of Hazardous Materials; Driving and Parking Rules.

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation are adopted:

(1)(a) City buses and suburban buses are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(b) The operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall comply with the provisions of 49 CFR Part 383 and provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section.

(2)(a) Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education are not required to comply with the federal regulations adopted in this administrative regulation.

(b) Any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section.

(c) The operators of the vehicles specified in paragraph (a) of this subsection shall meet the requirements of 49 CFR Part 382 relating to drug and alcohol testing.

(3) Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4) Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) Except for transporters of hazardous materials subject to the requirements of [~~under~~] 601 KAR 1:025, motor vehicle operators who are operating a vehicle in an intrastate commerce are not required to be twenty-one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, they shall be at least eighteen (18) years of age.

(6) Utility motor carriers while operating exclusively in intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency which requires their employees to work to restore service.

(7) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040. If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

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(8) Motor carrier vehicles operated exclusively in intrastate commerce may comply with the provisions of 601 KAR 1:200, Section 3, [4-160] rather than 49 CFR Part 390.21.

Section 4. Buses. (1) Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) Seats shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) All operators shall take into consideration the health and welfare of their passengers and control their operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doorwell.

Section 6. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial driver or vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" as revised April 1, 1996 by the Commercial Vehicle Safety Alliance.

(2)(a) If a commercial vehicle is being operated either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the motor vehicle is further operated.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer to conduct a safety inspection of the vehicle shall be cause for the officer to place the vehicle out-of-service until the permission is granted. Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3) If a commercial driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle. However, the commercial driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified. Refusal of the commercial driver to grant permission for a law enforcement officer to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted. Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of this administrative regulation.

Section 7. Persons Allowed to Perform Physical Examinations. Medical examiner is defined in 49 CFR 390.5 as a person who is licensed, certified, and/or registered, in accordance with applicable state laws and administrative regulations, to perform physical examinations. According to Kentucky state law this shall include the following:

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of Medical Licensure when working under the direct supervision of a licensed physician; and

(4) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing.

Section 8. Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

~~[(a) 61 Fed. Reg. 9567, March 8, 1996;~~

~~(b) 61 Fed. Reg. 1843, January 24, 1996;~~

~~(c) 60 Fed. Reg. 46245, September 6, 1995;~~

~~(d)] "North American Uniform Out-Of-Service Criteria" revised April 1, 1996 by the Commercial Vehicle Safety Alliance[;~~

~~(e) 61 Fed. Reg. 14677, April 3, 1996, L S Document 563016;~~

~~(f) 61 Fed. Reg. 14677, April 3, 1996, L S Document 563016; and~~

~~(g) 61 Fed. Reg. 13338, March 26, 1996].~~

(2) The material incorporated by reference in this administrative regulation may be reviewed at any of the weigh stations operated by the Transportation Cabinet. Further, the material may be inspected, copied, or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours are 8 a.m. through 4:30 p.m. eastern time on week days. The telephone number is (502) 564-3276.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: October 14, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 21, 1996 at 8 a.m., local prevailing time in the Transportation Cabinet, Fourth Floor Hearing/Conference Room of the State Office Building, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 14, 1996, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. 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 14, 1996. 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 21, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: 30,000 motor carriers operating in Kentucky; 790,000 commercial trucks operating in Kentucky; and 118,000 commercial drivers licensed in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received: A public comment hearing was not held, but the changes in this administrative regulation should have no effect on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held, but the changes in this administrative regulation should have no effect on the cost of living or employment.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:
2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body: The only effect on the Transportation Cabinet of this change to the administrative regulation is to the cabinet as a motor carrier rather than as the administrative body. Therefore, this subsection will remain uncompleted.

(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:

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Road Fund as authorized in the Transportation Cabinet, Department of Vehicle Regulation Biennial Budget. A significant portion of these funds are made available to Kentucky as a grant from the Federal Motor Carrier Safety Program.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No anticipated economic impact.

(b) Kentucky: No anticipated economic impact

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives to the federal mandates which were the primary changes to this administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments: The amendments to the federal motor carrier safety regulations also included many minor technical amendments to keep the regulations accurate and up to date. Changes made by the US Department of Transportation since the last adoption of the federal motor carrier safety regulations include the following: allow commercial drivers additional time to provide sufficient specimens for urine drug tests; require medical review officers to provide test results to employer regardless of who paid for the test; extend until January 2, 1997 the effective date of the new requirements for intermodal containers.

(11) TIERING: Is tiering applied? Yes. The administrative regulation is tiered in that more stringent safety requirements are imposed on the owners and operators of larger vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 390 - 399. These federal regulations extensively reference 49 CFR Part 383 relating to the commercial driver's license.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Part 40, Parts 382 - 383 and 390 - 397. To date the Federal Highway Administration has agreed that it is not necessary for Kentucky to adopt 49 CFR Part 398 relating to the transportation of migrant workers and 49 CFR Part 399 relating to motor carrier employee safety and health standards.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

a. Commercial Driver' License standards for the issuance, testing and withdrawal of a CDL;

b. Establishes 0.04% BAC as the level at which an operator of a commercial vehicle is considered to be DUI;

c. Establishes the maximum number of hours a commercial driver may be on-duty and how he must keep a record of the amount of time he has worked;

d. Establishes the qualifications for a commercial driver including his physical fitness, age, emotional condition, prior driving history and a drug testing program for interstate and intrastate motor carriers;

e. Defines the safe method in which a commercial vehicle must be operated including stopping at railroad crossings; cease driving when ill or fatigued; not to use drugs or alcohol while operating a commercial vehicle; conformance with the speed limit; required use of turn signals; use of seat belts; use of emergency flashers when the commercial vehicle is stopped on the highway; use of lights on the commercial vehicle; duty in case of an accident; and fueling precautions;

f. Defines the parts and accessories necessary for the safe operation of a commercial vehicle;

g. Establishes a formal maintenance and repair schedule and records for the safe operation of a commercial vehicle and requires the maintenance and inspections to be preformed by certified inspectors or mechanics; and

h. Driving and parking rules while transporting hazardous materials.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. In fact, Kentucky, with reluctantly given federal approval, has imposed slightly less restrictive standards on intrastate drivers. For example, intrastate motor carriers have a minimal medical waiver program. However the medical waiver program for intrastate commercial drivers has been expanded. Unless operating a school bus or transporting hazardous materials, the intrastate Kentucky driver must only be 18 rather than 21, and farmers in daylight hours have less restrictive lighting requirements than the operators of other commercial vehicles.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The less stringent requirements for intrastate motor carriers were adopted to allow Kentucky companies to continue operating as they had been doing for years. The Transportation Cabinet was strongly petitioned

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by legislators and public interest groups to allow these exemptions.

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. In most instances, the effect will be on the county road or public works department.

3. State the aspect or service of local government to which this administrative regulation relates. The local government drivers of the commercial vehicles above 26,000 pounds will have to be drug and alcohol tested on a preemployment, random, post-accident, and for cause basis. Previously, state and local government drivers were exempt from this requirement.

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 in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): It will cost local governments approximately \$100 for each drug and alcohol test performed. The cost to each unit of local government depends on the number of commercial drivers it employs.

Other Explanation:

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (Amendment)

601 KAR 11:020. Commercial driving history record.

RELATES TO: KRS 281A.100

STATUTORY AUTHORITY: KRS 186.018, 281A.100

NECESSITY AND FUNCTION: KRS 281A.100 allows the dissemination of commercial driving history records. It further allows the Transportation Cabinet to charge a fee and establish what shall be included in the driving history record. This administrative regulation establishes the content of a commercial driving record, the fee for purchasing a record and the procedures to be followed for purchasing a record.

Section 1. Employer or Prospective Employer. In order for the Transportation Cabinet to provide a copy of a ten (10) year commercial driving history record to a commercial driver's employer or prospective employer, the commercial driver shall sign a statement that the firm or person applying for the commercial driving history record is his employer or prospective employer.

Section 2. Authorized Persons. Any person authorized in writing by a commercial driver may apply for a copy of the commercial driver's complete driving history.

Section 3. Unauthorized Persons. Any person or company not authorized in writing by a commercial driver to receive a copy of his commercial driving history record may apply for a copy of the commercial driver's three (3) year driving history record authorized by KRS 187.310. The driving history record shall include entries of the last three (3) years relating to commercial as well as noncommercial vehicles.

Section 4. Other Licensing Jurisdictions, Courts and Police Agencies. (1) The driving history record of a commercial driver shall

be provided to another licensing jurisdiction on a reciprocal basis.

(2) The driving history record of a commercial driver shall be provided to a court or police agency without charge.

Section 5. Fee. ~~[(1) Except as provided in Sections 4 of this administrative regulation and subsection (2) of this section,] The fee for obtaining a driving history record of a commercial driver shall be three (3) ~~five (5)~~ dollars. The fee shall be paid prior to the issuance of the commercial driving history record.~~

~~[(2) Any person submitting a request for driving history records of commercial drivers by any method of data processing recording media adaptable to the Transportation Cabinet's system shall be given a ten (10) percent reduction in cost per record. These persons may be billed periodically by the Transportation Cabinet for all driving history records purchased.]~~

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: October 14, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 21, 1996 at 1 p.m., local prevailing time in the Transportation Cabinet, Fourth Floor Hearing/Conference Room of the State Office Building, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 14, 1996, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. 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 14, 1996. 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 21, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: The 15,000 persons who annually purchase a commercial driving history record.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes to this administrative regulation will have no impact on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes to this administrative regulation will have no impact on the cost of living or employment.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Due to the change in state law, as reflected in this administrative regulation, the

driver licensing computer information system will be reprogrammed to only require a \$3 fee instead of a \$5 fee for the purchase of a commercial driving history record.

(a) Direct and indirect costs or savings: There will be a direct loss of \$30,000 each year to the State Road Fund. However, requiring the same fee for a commercial driver's history as for a regular operator's history will simplify the process. When the fees were different, person's requesting to purchase a driving history record never knew how much the total bill would be because most of the purchasing is done by insurance companies who did not know whether the person for whom they were requesting a driving history record had a commercial driver's license.

1. First year: Minor reprogramming costs plus the \$30,000. However, the reduction in confusion and resulting good will should more than offset that.

2. Continuing costs or savings: \$30,000 each year

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as budgeted in the biennium budget for the Department of Vehicle Regulation, Division of Driver Licensing.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The change in this administrative regulation should have no impact on the economy.

(b) Kentucky: The change in this administrative regulation should have no impact on the economy.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Since KRS 186.018 sets forth the \$3 fee for a driving history record, the idea of repealing this administrative regulation was considered. However, KRS 281A.100 requires the cabinet to promulgate an administrative regulation setting the fee which is not to exceed \$5. Therefore, to avoid any confusion, the cabinet decided to amend this administrative regulation.

(8) Assessment of expected benefits: Less confusion for those persons purchasing driving history records.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 186.018 sets a fee of \$3 for each driving history record sold. KRS 281A.100 requires the Transportation Cabinet to establish by administrative regulation the fee for a commercial driving history record. The fee pursuant to KRS 281A.100 cannot exceed \$5.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: By amending this administrative regulation to require a \$3 fee for each commercial driving history record sold, the Transportation Cabinet has complied with both statutes and resolved any conflict which might have existed.

(10) Any additional information or comments: Previously, the Transportation Cabinet had offered a 10 cent reduction in the cost of a driving history record if the company applying for the information submitted the request electronically. The passage of HB 400 (Graduated Driver's License Bill) by the 1996 General Assembly, ended this practice. That 10 cents is now required to be used by the Division of Driver Licensing to assist in paying for the mandatory driving education program that those under 18 are required to attend.

(11) TIERING: Is tiering applied? No. State law sets the fee for

the purchase of any driving history record.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Amendment)

601 KAR 13:025. Point system.

RELATES TO: KRS 186.570, 186.572, 189.990(5)

STATUTORY AUTHORITY: KRS 186.400

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation specifies the driver licensing point system in which traffic offense convictions are assigned a certain number of points, according to the seriousness of the offense as determined by either accident-cause statistics or by statute. Certain offenses have proven so dangerous that they are made cause for suspension periods rather than point accumulation. The purpose of the point system is to establish a criterion whereby the discretion allowed the Transportation Cabinet in determining the "habitually reckless or negligent driver" or the "serious violator" is not exercised arbitrarily and capriciously, but each license holder will be treated like every other one, and each will know or can determine his point status at any given time. ~~[This administrative regulation is being promulgated to replace 601 KAR 13:020 which expired on July 13, 1990 after having been found not to be in conformance with state law by both the Administrative Regulations Review Subcommittee and the Interim Joint Transportation Committee. Section 4 of this administrative regulation which contained the problem language has been revised so that it is now in conformance with state law.]~~

Section 1. Definitions. "Probation" means that a pending driving privilege suspension period is held in abeyance provided the person attends an approved driver improvement clinic and provided his driving privilege has not been withdrawn in any other jurisdiction.

Section 2. (1) To assist the Transportation Cabinet in making a determination that a person is a habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws in accordance with KRS 186.570 a schedule of penalty points is established for the purpose of denying, withdrawing, suspending or revoking that person's driving privilege and operator's license.

(2) Value points for the various classifications of moving traffic offenses, or a driving privilege suspension period for certain named offenses, shall be assessed as set out in Sections 3 and 4 of this administrative regulation for all persons.

(3) Points shall be assessed or driving privilege suspensions invoked for conviction, forfeiture of bail, or payment of fine, with or without a court appearance, for the enumerated offenses whether the conviction is received from a court of competent jurisdiction within the Commonwealth of Kentucky or any other jurisdiction, except that out-of-state speeding offenses shall not be considered by the cabinet for the assessment of value points.

(4) Information regarding convictions may be secured from any official source or record available to public or cabinet inspection.

(5) Complete records of driving privilege suspensions and point system assessments shall be maintained in the Transportation Cabinet for a period of five (5) years for noncommercial vehicles operators and ten (10) years for commercial vehicle operators.

Section 3. Conviction for one (1) of the following serious violations of the motor vehicle laws may be cause for suspension of the driving privilege of the person so convicted for the period of time indicated:

(1) Racing - 90 days;

(2) Speeding 26 MPH or more over limit - 90 days; or

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(3) Attempting to elude law enforcement officer by use of motor vehicle - 90 days.

Section 4. Conviction for any one (1) of the following moving traffic offenses shall be cause for assessment of the points indicated:

(1) Speeding 15 MPH or less over the limit - 3 (except as provided in KRS 186.572);

(2) Speeding 16 MPH or more, but less than 26 MPH, over the limit - 6;

(3) Failure to stop for church or school bus - 6;

(4) Improper passing - 5;

(5) Reckless driving - 4;

(6) Driving on wrong side of road - 4;

(7) Following too closely - 4;

(8) Failure to yield to emergency vehicle - 4;

(9) Changing drivers in a moving vehicle - 4;

(10) Vehicle not under control - 4;

(11) Stop violation (electric signal, railroad crossing, stop sign) -

3;

(12) Failure to yield - 3;

(13) Wrong way on one-way street - 3;

(14) Too fast for conditions - 3;

(15) Too slow for conditions - 3;

(16) Improper start - 3;

(17) Improper driving - 3;

(18) Careless driving - 3;

(19) Failure to yield left lane - 3;

(20) Improper lane usage - 3;

(21) Failure to illuminate headlights - 3;

(22) Failure to dim headlights - 3;

(23) Any other moving hazardous violation[s] - 3;

(24) Commission of a moving hazardous violation which involves an accident - 6; or

(25) Combination of two (2) or more moving hazardous violations in any one (1) occurrence - 6.

Section 5. (1)(a) If a person of eighteen (18) or more years accumulates six (6) or more penalty points within a two (2) year period, the Transportation Cabinet may send a letter to the address shown on his driving history record that shall advise him of the number of penalty points on his driving history record.

(b) The letter shall inform the person of the penalties which may be imposed if he were to accumulate twelve (12) points within two (2) years.

(2)(a) If a person of less than eighteen (18) years accumulates four (4) or more penalty points within a two (2) year period, the Transportation Cabinet may send a letter to the address shown on his driving history record that shall advise him of the number of penalty points on his driving history record.

(b) The letter shall inform the person of the penalties which may be imposed if he were to accumulate more than six (6) points prior to his 18th birthday.

Section 6. (1) If a of eighteen (18) or more years person accumulates twelve (12) points within a period of two (2) years or a person of less than eighteen (18) years accumulates more than six (6) points in a period of two (2) years, the cabinet may suspend the driving privilege of the [such] person for a period of six (6) months for the first [such] accumulation of [twelve (12)] points, one (1) year for the second [such] accumulation of [twelve (12)] points, and two (2) years for any subsequent accumulation of [twelve (12)] points within a two (2) year period.

(2) For any offense for which the suspension of the driving privilege is six (6) months or less for the first offense, the second conviction of a similar offense shall result in a suspension period of not less than one (1) year, and any subsequent conviction for any similar offense not less than two (2) years.

Section 7. If the cabinet suspends the driving privilege of a person more than one (1) time under the provisions of this administrative regulation, the suspension times shall run consecutively.

Section 8. (1) The following persons may be placed on probation instead of having his driving privilege withdrawn:

(a) Any person of eighteen (18) or more years who accumulates twelve (12) points or more within a period of two (2) years;

(b) Any person under the age of eighteen (18) years who accumulates more than six (6) points; or

(c) Any person regardless of age who is convicted of any offense that could result in a suspension of his driving privilege under the provisions of this administrative regulation, may be placed on probation in lieu of suspension.

(2) The probation period shall be two (2) times the length of time the suspension would have been if imposed.

(3) [(2)] If a person on probation receives an additional conviction for a moving traffic offense with or without court appearance, or upon his failure to successfully enroll in and complete the driver improvement clinic, the person shall have his driving privilege in Kentucky suspended for the period of time outlined in Section 6(1) and (2) of this administrative regulation.

(4) [(3)] Once a person has been placed on probation by the cabinet, he shall not be considered for probation again until a lapse of two (2) years from the ending date of the probation period granted, whether served or not.

(5)(a) [(4)] If a person whose driving privilege has been suspended under the provisions of this administrative regulation becomes eligible for probation, the cabinet may waive the remainder of a driving privilege suspension period.

(b) Upon this waiver, the cabinet shall place the driver on probation for two (2) times the amount of time remaining on the suspension period.

Section 9. Any person who holds a valid operator's license from another licensing jurisdiction and who after establishing residence in Kentucky applies to become a valid license holder may be considered for an operator's license in Kentucky. However, the [such] person's driving privilege shall not be under suspension or revocation by any jurisdiction at the time of his application in Kentucky.

Section 10. When a conviction report is used by the Transportation Cabinet to impose a driving privilege suspension or probation, it shall never be used for the imposition of an unrelated suspension or probation. It may be used to show that the person's driving privilege has previously been suspended.

Section 11. A [No] person's driving privilege shall not be suspended under any section of this administrative regulation without his first being offered an informal hearing, unless the informal hearing offer has been waived.

Section 12. (1) As soon as the Transportation Cabinet is made aware that a person has committed sufficient offenses that his driving privilege is placed in jeopardy, the cabinet shall establish a time and place for the informal hearing on the matter. The cabinet shall notify that person of the informal hearing by first class mail delivered to his last known address as reflected on the person's driving history record.

(2) The person shall appear for the informal hearing at the established time and place. The informal hearing shall be conducted by a driver improvement officer who is an appointed representative of the Transportation Cabinet. The testimony given at the informal hearing shall be recorded and the [such] recordings retained by the cabinet for a period of sixty (60) days.

(3) Based upon the evidence and testimony received at the informal hearing and the person's driving history record, the driver improvement [hearing] officer shall determine whether the cabinet

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may withdraw the person's driving privilege. If he determines that the cabinet may withdraw the person's driving privilege, he may either order suspending the person's driving privilege or grant probation to the person.

(4) If probation is granted, the terms shall be carefully explained to the person. The person shall indicate his understanding and acceptance of those terms by signing a standard form prepared by the Transportation Cabinet.

(5) If probation is not granted the person, the driver improvement [hearing] officer shall prepare the order suspending the person's driving privilege at the close of the informal hearing. The effective date of the suspension shall be included in the order. The driver improvement [hearing] officer shall hand the order to the person prior to his departure.

(6) The person may in writing within twenty (20) days of the date of the cabinet's action request an administrative hearing to be held pursuant to the provisions of KRS Chapter 13B from [file a grievance with] the Transportation Cabinet if he is aggrieved by any action taken by the cabinet under the guidelines of this administrative regulation. The request for an administrative hearing shall be submitted to the Transportation Cabinet, Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622. The request for hearing [grievance] shall state the reasons he believes the Transportation Cabinet has taken erroneous action. [In not less than fifteen (15) nor more than thirty (30) days thereafter the aggrieved party may file an action against the Transportation Cabinet in the circuit court of the county in which he resides or in Franklin Circuit Court.]

(7) The Transportation Cabinet shall conduct the administrative hearing pursuant to the provisions of KRS Chapter 13B.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 8 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 21, 1996 at 1 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 14, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. 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 14, 1996. 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 14, 1996. 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, Fax: (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All licensed drivers living in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None discussed at the

public hearing

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None discussed at the public hearing

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The only time there is an impact on a licensed driver is when he has been convicted of a moving traffic violation. If the person is placed on probation, in order to retain his driving privilege, he must not again be convicted of a moving traffic violation. There are no reporting or paperwork requirements.

2. Second and subsequent years: Same as above

(3) Effects on the promulgating administrative body: The Transportation Cabinet must hold informal hearings with all persons who accumulate 12 points within a two-year period (6 points for those under the age of 18). If the person disagrees with the result of the informal hearing, he may request a formal administrative hearing. The Transportation Cabinet is required to maintain accurate records of the convictions of moving traffic violations for all Kentucky residents.

(a) Direct and indirect costs or savings:

1. First year: There will be more informal hearings held with persons under the age of 18 since they are now subject to driving privilege withdrawal when he accumulates more than 6 points.

2. Continuing costs or savings: The administrative costs of holding the informal hearings will increase slightly.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will notify the persons under the age of 18 of their status as a result of convictions of moving traffic violations.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund - The allocation of funds to the Division of Driver Licensing.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The changes made to the administrative regulation were mandated by the passage of HB 400 in 1996. The General Assembly, as part of the Graduated Driver Licensing Law, mandated that when a person under the age of 18 accumulates more than six points pursuant to this administrative regulation, his driving privilege is placed in jeopardy.

(8) Assessment of expected benefits: As with the other provisions of House Bill 400, the changes to 601 KAR 13:025 are designed to increase highway safety by strongly encouraging new drivers to be more careful with the threat of loss of driving privilege.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There should be a reduction in the number of crashes in which young drivers are involved.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If this were not implemented, the point system administrative regulation would not be in compliance with state law. Yes, there would be an adverse effect on highway safety.

(c) If detrimental effect would result, explain detrimental effect: The high crash and death rate of the state's teens would continue.

(9) 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:
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? Yes The entire administrative regulation is a tiering of the assessment of penalties for persons convicted of moving traffic violations.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Amendment)

601 KAR 13:070. Applicant for an operator's license who is under the age of eighteen (18), notification. [School attendance and academic sufficiency verification.]

RELATES TO: KRS 159.051, 186.440, ~~[186.450, 186.470,]~~ 186.560

STATUTORY AUTHORITY: KRS 186.400

NECESSITY AND FUNCTION: KRS 159.051 and 186.560 require that the driving privilege of a student be withdrawn by the Transportation Cabinet if a school district superintendent notifies the Transportation Cabinet that the student is not in compliance with KRS 159.051. ~~KRS 186.440 [HB 43 passed in the Regular Session of the 1990 General Assembly is applicable only in those counties of Kentucky served by a school district which has an alternative education program approved by the Department of Education. The bill] requires anyone under the age of eighteen (18) years who is applying for the privilege of operating a motor vehicle [either a learner's permit or operator's license] and who has not graduated from high school to present notification from his school district [verification issued by his school within the preceding thirty (30) days] that he is enrolled in school and has not been found [academically] deficient pursuant to KRS 159.051. [Further, KRS 186.560 requires the Transportation Cabinet as soon as notified to revoke the license of a person under the age of eighteen (18) years who has dropped out of school or is academically deficient.] This administrative regulation establishes [sets forth] the information which is to be submitted to the Transportation Cabinet and the circuit court clerk in order for them to meet their statutory duties. It further establishes [sets forth] the times within the driver licensing process when a school attendance form is to be presented to the circuit court clerk and the steps to be followed [by a youth] in restoring the driving privilege of a person whose driving privilege was withdrawn because of noncompliance with KRS 159.051. [having his driving privilege restored.]~~

Section 1. Driver Licensing Process. Since the first step in obtaining the privilege to operate a motor vehicle is the application for a learner's permit, an applicant for a learner's permit shall submit to the Circuit Court Clerk the notification of compliance with KRS 159.051, as required by KRS 186.440(2). ~~[No person shall be declared to be academically deficient for any school semester prior to the fall semester of 1990.]~~

Section 2. Notification by School Enrollment Form [Verification]. An applicant under the age of eighteen (18) years seeking either an original learner's permit ~~[operator's license]~~ or a transfer learner's permit or transfer operator's license because of moving from one (1) county to another within Kentucky or because of moving to Kentucky from another licensing jurisdiction and ~~[learner's permit]~~ who resides within the boundaries of a school district which has reported to the Transportation Cabinet that it has an alternative education program which complies with 704 KAR 7:100 ~~[approved by the Department of Education]~~ shall submit a school enrollment ~~[verification]~~ form from either a public, common or private school ~~[as provided in 704 KAR~~

~~7:100, Section 4]~~ or shall submit proof of high school graduation to the circuit court clerk in his county of residence. The school enrollment ~~[verification]~~ form shall contain at a minimum the following information:

- (1) Applicant's full name;
- (2) Applicant's Social Security, learner's permit, or operator's license number;
- (3) ~~[Applicant's full address;~~
- (4) ~~[Applicant's date of birth;~~
- (5) ~~[Name of the school [district];~~
- (4) ~~[(6)]~~ Name of the school district;
- (5) ~~[(7)]~~ School district address;
- (6) ~~[(8)]~~ Signature and title of the school district official executing the ~~[verification]~~ form;
- (7) ~~[(9)]~~ Notice ~~[Certification]~~ of the applicant's school enrollment in accordance with KRS Chapter 159;
- (8) ~~[(10)]~~ After the end of the 1990 fall semester, certification that the applicant is in compliance ~~[not academically deficient in accordance]~~ with KRS 159.051 ~~[Chapter 159]; and~~
- (9) ~~[(11)]~~ Date of notice ~~[verification]~~ which shall be within the preceding sixty (60) ~~[thirty (30)]~~ days ~~[but shall not be prior to July 13, 1990].~~

Section 3. Home Schooling Notice [Verification]. An applicant for an original learner's permit or a transfer learner's permit or a transfer operator's license because of moving from one (1) county to another within Kentucky or because of moving to Kentucky from another licensing jurisdiction and ~~[a learner's permit or operator's license]~~ who resides within the boundaries of a school district which has reported to the Transportation Cabinet that it has an alternative education program which complies with 704 KAR 7:100 ~~[approved by the Department of Education]~~, who is under the age of eighteen (18) years, who has not graduated from high school and who is being schooled at home shall present schooling notification ~~[verification]~~ to the circuit court clerk in his county of residence. The notification ~~[verification]~~ shall contain at least the following information:

- (1) Applicant's full name;
- (2) Applicant's Social Security, learner's permit, or operator's license number;
- (3) ~~[Applicant's full address;~~
- (4) ~~[Applicant's date of birth;~~
- (5) ~~[(6)]~~ Parent or guardian's full name;
- (4) ~~[(6)]~~ Parent or guardian's address;
- (5) ~~[(7)]~~ Signature of parent or guardian;
- (6) ~~[(8)]~~ Notice ~~[Certification]~~ that applicant is being schooled at home;
- (7) ~~[(9)]~~ After the 1990 fall semester, certification that the applicant is in compliance ~~[not academically deficient in accordance]~~ with KRS 159.051 ~~[Chapter 159]; and~~
- (8) ~~[(10)]~~ Date of notice ~~[verification]~~ which shall be within the preceding sixty (60) ~~[thirty (30)]~~ days ~~[but shall not be prior to July 13, 1990].~~

Section 4. Notification of Noncompliance with KRS 159.051. [Certification of School Dropout or Academic Deficiency.] (1) ~~If [When]~~ the superintendent of a school district which has an alternative education program approved by the Department of Education submits notice ~~[certifies]~~ to the Transportation Cabinet that a student is not in compliance with KRS 159.051 ~~[has dropped out of school or is academically deficient]~~, the superintendent shall provide the following information to the Division of Driver Licensing, 501 High Street, State Office Building, Second Floor, ~~[High and Clinton Streets,]~~ Frankfort, Kentucky 40622:

- (a) Student's full name;
- (b) ~~[Student's address;~~
- (c) ~~[(6)]~~ Student's Social Security, learner's permit, or operator's license number;

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~~[(d) Student's date of birth;~~
~~(e) Certification that the student has dropped out of school or after the 1990 fall semester, is academically deficient as defined in KRS Chapter 159;]~~

~~(c) Notice that the student is not in compliance with KRS 159.051;~~

~~(d) Notice [(f) Certification] that the school district has an alternative education program approved by the Department of Education pursuant to 704 KAR 7:100;~~

~~(e) [(g)] Superintendent's name;~~

~~(f) [(h)] Name of school district;~~

~~(g) Under seal of notary, the signature of the [(i) Signature of] superintendent or other person authorized by the superintendent to submit the notice [certification]; and~~

~~(h) [(j)] Date of notice [certification].~~

(2) The Transportation Cabinet shall prepare a form containing space for the ~~[above]~~ information required pursuant to subsection (1) of this section ~~[and certifications]~~. The forms shall be made available to the Department of Education for distribution.

Section 5. Reapplication After Compliance with KRS 159.051. (1) ~~Each time a student is eligible to reapply [Return to School or Academic Sufficiency. A student who is reapplying] for driving privilege after complying with KRS 159.051, the school district [a return to school or achieving academic sufficiency] shall submit a notice [verification] of this to the Division of Driver Licensing, 501 High Street, State Office Building, Second Floor, Frankfort, Kentucky 40622.~~

(2) The student may submit a copy of the notice from his school district to the circuit court clerk in his county of residence.

(3) The notice ~~[verification]~~ shall contain at least the following information:

~~(a) [(1)] Applicant's full name;~~

~~(b) [(2)] Applicant's address;~~

~~(c) [(3)] Applicant's Social Security, learner's permit, or operator's license number;~~

~~[(4)] Applicant's date of birth;~~

~~(c) [(5)] Name and address of the school district;~~

~~(d) [(6)] Name and address of the school;~~

~~(e) [(7)] Signature and title of the school district official executing the notice [verification] form;~~

~~(f) Notice [(8) Certification] of applicant's compliance with KRS 159.051 [reenrollment in school in accordance with KRS Chapter 159;~~

~~(9) Certification that the applicant is not academically deficient in accordance with KRS Chapter 159]; and~~

~~(g) [(10)] Date of the notice [verification].~~

Section 6. Driving Privilege Restoration. Any person who is eligible to have his driving privilege restored only because he has reached his 18th birthday, that is, he neither has been certified by his school district as once again being in compliance with KRS 159.051 ~~[a student in good standing]~~ nor has a court ordered the restoration of his driving privilege, shall again be examined by the Kentucky State Police.

Section 7. Court Petition. Any person denied an instruction permit or operator's license because he was not eligible for a school enrollment or home schooling notice ~~[verification]~~ form may, for the reasons set forth in KRS 159.051 ~~[Chapter 159]~~, petition the jurisdictional court for an operator's license eligibility order so that he might apply for an instruction permit or operator's license.

Section 8. Counties with Multiple School Districts. In a county with multiple school districts, if at least one (1) but not all have an alternative education program approved by the Department of Education, then each applicant ~~[all applicants]~~ for an instruction permit or operator's license under the age of eighteen (18) years shall present to the circuit clerk's office either a school enrollment or home

schooling notice ~~[verification]~~ form as described in Sections 2 and 3 of this administrative regulation, proof of high school graduation or proof from his school on a form approved by Department of Vehicle Regulation that he resides in a district which does not have an approved alternative education program.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: October 14, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 21, 1996 at 1 p.m., local prevailing time in the Transportation Cabinet, Fourth Floor Hearing/Conference Room of the State Office Building, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 14, 1996, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. 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 14, 1996. 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 21, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: 100,000 students under the age of 18 residing in Kentucky. This includes the 2/3 of the eligible population who reside in school districts which participate in the "High School Dropout Program".

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes to this administrative regulation will have no impact on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes to this administrative regulation will have no impact on the cost of living or employment.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The school boards are required to file specific information with the Transportation Cabinet when notifying the Cabinet that a student is or is not in compliance with the provisions of KRS 159.051. Information which had proven to be unnecessary has been deleted from this administrative regulation. State law was amended in 1996 (House Bill 400) to require that proof of compliance with KRS 159.051 be submitted only one time to the circuit clerk during the driver licensing process. Previously, the student was required to submit proof of compliance at the time of application for a learner's permit and again when applying for an operator's license.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: Due to the change in state law, as reflected in this administrative regulation, the driver licensing computer information system will be reprogrammed to only require proof of compliance at the time of application for a learner's permit.

(a) Direct and indirect costs or savings:

1. First year: Minor reprogramming costs.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as budgeted in the biennium budget for the Department of Vehicle Regulation, Division of Driver Licensing.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The change in this administrative regulation should have no impact on the economy.

(b) Kentucky: The change in this administrative regulation should have no impact on the economy.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Because of some vagueness in the wording of KRS 186.440, the Transportation Cabinet had to decide if the single proof of compliance with KRS 159.051 was to be submitted by a student at the time of application for an operator's license or a learner's permit. Since the bill sponsor and representatives from the Division of Driver Licensing all testified during the 1996 Legislative Session that the single proof would be required to be presented at the time of application for a learner's permit, and since that is also the first step in the driver licensing process, the cabinet agreed that the proof of compliance with KRS 159.051 should be presented by a student at the time of application for a learner's permit.

(8) Assessment of expected benefits: Compliance with state law and a reduction in the paperwork required of the participating school boards.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 186.440 is ambiguous in that it can be interpreted to require the presentation of proof of compliance with KRS 159.051 at either the time a student applies for an operator's license or a learner's permit.

(a) Necessity of proposed regulation if in conflict: Not in conflict, just clarifies the interpretation of KRS 186.440.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The students residing in school districts participating in the "High School Dropout Program" must all meet the same requirements to be eligible for the privilege to operate a motor vehicle.

**TRANSPORTATION CABINET
Department of Highways
Division of Transportation Planning
(Amendment)**

603 KAR 5:115. Coal-haul highway system; reporting requirements.

RELATES TO: KRS 42.455(8), 177.977, 177.9771

STATUTORY AUTHORITY: KRS 42.455(8), 174.080, 177.977

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.455 designates the Kentucky Transportation Cabinet as the agency responsible for the identification of public highways, roads and streets that comprise the official coal-haul highway system. In addition, both KRS 42.455 and 177.977 require the Transportation Cabinet to publish this information in a directory on an annual basis. In order to discharge this responsibility, the cabinet must gather pertinent information from all coal shippers or owners regarding the movement of coal in Kentucky. This administrative regulation specifies the procedures and intervals to be used in reporting this information to the Transportation Cabinet. In addition, KRS 177.9771 requires the coal road system transportation report to include coal by-products. Reporting [Allowing] the transportation of coal by-products [to be reported] to the Transportation Cabinet is necessary in order for the cabinet to prepare this report.

Section 1. Definitions. (1) "Owner" means any individual, partnership, joint venture, association or corporation who owns the coal at the time of transport.

(2) "Interval" means a semiannual reporting period. The first interval of each calendar year shall be January 1 through June 30. The second interval of each calendar year shall be July 1 through December 31.

(3) "Coal by-product" means any of the following:

(a) Fly ash;

(b) Bottom ash;

(c) Wet bottom boiler slag;

(d) Scrubber sludge;

(e) Burned coal waste known as red dog;

(f) Coal slag; or

(g) Coal cinders.

Section 2. Reporting Requirements. (1) On or before the ~~30th~~ ^{20th} day of the month following the interval in which any coal is shipped over public highways, roads, or streets by or on behalf of any owner from a mine mouth or pit to a processing plant, tippie, loading dock, or customer, or from any of the foregoing locations to another of these locations, the owner shall file a report on Form TC 59-100, Coal Shipment Route and Tonnage Report. ~~[This form, last revised in August, 1995, is incorporated by reference as a part of this administrative regulation.]~~

(2) Form TC 59-100 shall be completed by providing the following information about the coal being reported:

(a) Origin;

(b) Destination;

(c) Tons; and

(d) Specific route used for transportation of the coal with approximate mileage for [Approximate highway mileage including] state-maintained highways, county roads, and city streets.

(3) Form TC 59-100 is mailed semiannually in December and June by the Division of Transportation Planning to various entities involved with mining, processing, transporting, or brokering coal.

(4) Nonreceipt of the mailed form shall not be justification for not submitting the required information.

~~[(5) Blank copies of the form TC 59-100 may be viewed, copied, or obtained from the Division of Transportation Planning, 125 Holmes Street, Frankfort, Kentucky 40622. The office telephone number is~~

(502) 564-7183.]

Section 3. Reporting Responsibility. (1) It is the exclusive responsibility of an owner of any coal transported over the Commonwealth's highways to ensure that the coal transportation is reported accurately to the Transportation Cabinet. The reporting may be done by the owner, his agent, contractor, processor or shipper.

(2)(a) Owners who ship no coal during an interval shall inform the cabinet of that fact on or before the due date for that interval's report.

(b) Owners not engaged in the transportation of coal in any way and who have no active coal severance tax number may notify the cabinet of the precise nature of their operations in order that their names may be temporarily or permanently removed from the cabinet's mailing list.

Section 4. Reconciliation of Data. (1) The Division of Transportation Planning in the course of its normal duties may delete duplicate information, reconcile ambiguities, and correct errors prior to finalizing the report. To accomplish this the division may consider prior year reports and other relevant information concerning coal transportation routes in Kentucky.

(2) The entity reporting the data [However, corrections] shall not report corrections [be made] to the reported data after it has been compiled and [is] submitted to the Department of [for] Local Government as required by KRS 42.455.

(3) If the Transportation Cabinet misinterprets data submitted pursuant to Section 3 of this administrative regulation, causing the Department of Local Government to make erroneous calculations in the distribution of the coal severance tax, the cabinet shall notify the Department of Local Government of the necessary change.

Section 5. Reporting of Coal By-products. (1) Coal by-product transportation information may be reported to the Transportation Cabinet in the same manner as coal transportation information and on the same forms designated and furnished by the cabinet.

(2) Coal by-product information shall be reported separately from the information required on coal transportation. Across the top of the TC 59-100 Form the person reporting the shipment of coal by-product shall clearly type or mark in all capital letters "MATERIAL SHIPPED IS COAL BY-PRODUCT, NOT COAL."

Section 6. Extended Weight Coal and Coal By-products Haul System. (1) The data collected and compiled from Form TC 59-100 shall be the basis for the Transportation Cabinet's designating the road segments included in the Extended Weight Coal or Coal By-products Haul System in 603 KAR 5:230.

(2) Failure of an owner to submit the required data relative to the transportation of either coal or coal by-products may result in the omission of a road segment from inclusion in 603 KAR 5:230.

Section 7. Material Incorporated by Reference. (1) Transportation Cabinet Form TC 59-100, "Coal Shipment Route and Tonnage Report" as effective July 1996, is incorporated by reference in this administrative regulation.

(2) Copies of the material incorporated by reference may be viewed, copied, or obtained from the Transportation Cabinet, Division of Transportation Planning, State Office Building Annex, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. local prevailing time on weekdays. The telephone number is (502) 564-7183.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: October 14, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 21, 1996 at 8:30 a.m.

local prevailing time in the Transportation Cabinet, Fourth Floor Hearing/Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 14, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. 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 14, 1996. 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 canceled, written comments will be accepted until close of business on November 21, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All owners or transporters of coal in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment hearing held. However, the changes in this administrative regulation should have no impact on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment hearing held. However, the changes in this administrative regulation should have no impact on the cost of living or employment.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The persons required to submit the coal transportation reports will no longer have to submit 4 reports a year. They will only have to submit 2 reports each year. However, the reports must now include the specific route over which the coal was transported.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The Transportation Cabinet will get the information needed in order to prepare the mandated coal haul studies.

(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

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road Fund

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comment hearing was held. However, no economic impact is anticipated from the amendment to the adminis-

trative regulation.

(b) Kentucky: No public comment hearing was held.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The no-change alternative was rejected because the 1996 General Assembly abolished the requirement that a coal company get an approved transportation plan prior to the issuance of a mining permit. Therefore, the Transportation Cabinet no longer has on file the information on the highway route over which the coal is anticipated to be transported. Since that information is essential to both the distribution of the coal severance tax and the implementation of the extended weight coal haul road system, the cabinet had to devise another way of securing the information.

(8) Assessment of expected benefits: Able to continue the mandated programs relating to identifying the coal haul routes in Kentucky.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The reporting requirements must be the same for all of the transporters of coal. Without this consistency the Transportation Cabinet will be unable to prepare the coal transportation reports required by state law.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(Amendment)

702 KAR 5:150. Transportation of preschool children.

RELATES TO: KRS 156.160, 157.226, 157.3175, 189.540

STATUTORY AUTHORITY: KRS 156.160, 189.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.150 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations regarding the transportation of children to and from school. KRS 189.540 requires the KBE to promulgate administrative regulations to govern the design and operation of Kentucky school buses. This administrative regulation provides school [the] districts [superintendent] with [the] guidelines necessary to provide transportation for preschool children.

Section 1. Kentucky school districts may transport three (3) and four (4) year old children. These children shall be transported on post federal standard (1978 through present) school buses. Local boards of education shall develop and incorporate within the existing board of education transportation policy, guidelines consistent with the child's mental and physical characteristics.

Section 2. (1) Local boards of education shall require each school bus transporting three (3) and four (4) year old children to be staffed with a minimum of one (1) driver assistant, of at least junior high or middle school age who is [minimum sixteen (16) years of age] qualified and trained to assist in the transportation of three (3) and four (4) year old children by a certified local board of education school bus driver training instructor.

(2) The driver training instructor shall qualify the driver assistants with training in student entrance of bus, student egress from bus,

safety rules of transportation, first aid as it pertains to emergency and immediate care, emergency evacuation, and student management as it relates to seated positions and seat occupancy.

(3) The Division of Pupil Transportation of the Department of Education shall provide the curriculum for driver assistant training.

(4) The number of assistants required for any one (1) school bus shall be recommended to the superintendent by the driver training instructor.

(5) Liability insurance shall be provided for the driver assistant as a named insured.

(6) The driver assistant shall be selected who has personal attributes and indicators which show the individuals ability to handle preschool [aged] children.

~~Section 3. [Local boards of education shall develop a policy requiring all three (3) and four (4) year old children to be transported on school bus seats located approximately midship of school bus. Loading shall begin in the middle of the bus and continue toward the front and rear. These children shall not occupy a front or rear row seat.~~

~~Section 4.] It shall be the responsibility of the parent, guardian, or person authorized by the parent of a preschool child to provide safe supervision to and from the bus stop and delivery to and receipt from the driver assistant.~~

Section 4. (1) [6-] The driver assistant shall be responsible to deliver and receive the child safely to and from the parent, guardian or person authorized by the parent. Three (3) and four (4) year old children who must cross a roadway shall be escorted by the driver assistant.

(2) [(4)] No three (3) or four (4) year old child shall be left unattended at the time of delivery.

(3) [(2)] If the parent, guardian or a person authorized by the parent to accept the child is not present upon delivery, the child shall be taken to a prearranged location.

(4) [(3)] If anyone other than the authorized person is to receive the child, such arrangements shall be made by the parent or guardian by prior written permission.

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

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

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REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: Kentucky Department of Education, Division of Pupil Transportation, 176 school districts.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Possible decrease, exact amount unknown. Amount of decrease would depend on the number of districts utilizing this regulation change to use middle school age or high school age children as monitors.

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: No other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would occur, explain detrimental effect:

N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No, tiering was not appropriate in this administrative regulation change because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Bureau of Learning Results Services (Amendment)

703 KAR 3:060. Procedures for determining rewards and sanctions.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 gives the Kentucky Board of Education [~~State Board for Elementary and Secondary Education~~] the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and for certified staff who are not assigned to a particular A1 school in a local school district but who are certified staff assigned to the district central office or an A2-A6 school. This administrative regulation establishes procedures for determining school and district rewards, levels of assistance, and sanctions. [Successful schools shall be defined in terms of student achievement of the goals set forth in KRS 158.6455, and these goals were adopted by the State Board for Elementary and Secondary Education on December 10, 1991, pursuant to KRS 158.6451. Finally, successful schools shall be defined with reference to the statewide assessment program set forth in KRS 158.6453.]

Section 1. Definitions. (1) "Accountability cycle 1" means that baseline data come from the 1991-92 data year, and that growth data come from the 1992-93 and 1993-94 years.

(2) "Accountability cycle 2" means that baseline data come from the 1992-93 and 1993-94 years, and that growth data come from the 1994-95 and 1995-96 years.

(3) "Accountability cycle 3" means that baseline data come from the 1994-95 and 1995-96 years, and that growth data come from the 1996-97 and 1997-98 years.

(4) "Accountability index" means the statistic which is the combination of the academic and noncognitive indices for a school or district pursuant to 703 KAR 4.010.

(5) "Baseline" means the accountability index score which describes the school or school district's percentage of successful students during the first two (2) years of each four (4) year accountability cycle.

(6) "Declines by less than five (5) percent" means obtains an average accountability index which is less than its baseline for that accountability cycle but which is not five (5) or more points below its baseline, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(7) "Declines by five (5) percent or more" means obtains an average accountability index for an accountability cycle which is five (5) or more points below its baseline for that cycle and obtains a year two (2) accountability index below its improvement goal for that cycle.

(8) "Gained population" means students in grades at which accountability assessments are administered who now must attend a school because of boundary changes.

(9) "Growth accountability index" means the accountability index score that describes the school's or school district's percentage of successful students during the last two (2) years of a four (4) year accountability cycle.

(10) "Improvement goal" or "threshold" means the accountability index score which describes the amount of growth required for a school or school district for the accountability cycle.

(11) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a school because of boundary changes.

(12) "Maintains the previous percentage of successful students"

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means obtains an average accountability index not less than the baseline nor equal to or greater than its improvement goal for that accountability cycle, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(13) "Maximum reward amount" means the percentage of salary set by the Kentucky Board of Education. "Maximum reward amount" also may be called "reward level 51 amount."

(14) "Minimum reward amount" is half of "maximum reward amount." "Minimum reward amount" also may be called "reward level 1 amount."

(15) "Original threshold" means the threshold for the previous accountability cycle.

(16) "Performance judgment" is defined in 703 KAR 4:090.

(17) "School" means an A1 school as defined in 703 KAR 4:080.

(18) "School district" means the administrative unit of schools under the jurisdiction of a board of education pursuant to KRS 160.160.

(19) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after boundary changes.

(20) "Year two (2) accountability index" means the accountability index a school or school district obtains in the last year of an accountability cycle. "School" means an A1 school as defined in 703 KAR 4:080.

(2) "School district" means the administrative unit of schools under the jurisdiction of a board of education pursuant to KRS 160.160.

(3) "Accountability index" means the statistic which is the combination of the cognitive and noncognitive indices for a school or school district pursuant to 703 KAR 4:010.

(4) "Baseline" means the accountability index score which describes the school or school district's percentage of successful students at the beginning of each biennium.

(5) "Threshold" means the accountability index score which describes the amount of growth required for a school or school district for the biennium.

(6) "Year two (2) accountability index" means the accountability index a school or school district obtains in the second year of the biennium.

(7) "Maximum reward amount" means the percentage of salary set by the State Board for Elementary and Secondary Education. "Maximum reward amount" also may be called "Reward level 51 amount."

(8) "Minimum reward amount" is half of "maximum reward amount." "Minimum reward amount" also may be called "Reward level 1 amount."

(9) "Declines by five (5) percent or more" means obtains an average accountability index for the biennium of five (5) or more points below its baseline that is established at the beginning of the biennium, is based on performance during the previous biennium, and obtains a year two (2) accountability index below its threshold goal for the biennium.

(10) "Declines by less than five (5) percent" means obtains an average accountability index for the biennium of less than five (5) points below its baseline for that biennium and obtains a year two (2) accountability index below the threshold goal for the biennium.

(11) "Maintains the previous percentage of successful students" means obtains an average accountability index for the biennium not less than its baseline nor equal to or greater than its threshold for that biennium and obtains a year two (2) accountability index below its threshold goal for the biennium, and obtains a year two (2) accountability index below the threshold goal for the biennium.]

Section 2. When a school does not have an accountability grade (grades four (4), five (5), seven (7), eight (8), eleven (11), or twelve (12)), that school shall be combined with the school having an accountability grade its students would subsequently attend.

Section 3. When a school has only one (1) of the two (2) accountability grades at the elementary school level (grades 4 and 5) or the middle school level (grades 7 and 8), the school shall be combined with the school having the higher grade level to which its students will be sent, forming a single accountability unit. If the school described in this section is sending or receiving its students to or from more than one (1) school, the affected schools shall be combined to form a single accountability unit.

Section 4. When a school has more than one (1) accountability level (elementary - grades 4 and 5, middle - grades 7 and 8, or high school - grades 11 and 12) [grade], the school's accountability index shall be the weighted average of the accountability indices for each accountability grade in the school.

Section 5. [4-] A school district's accountability index shall be the weighted average of its schools' accountability indices.

Section 6. (1) If a school or school district has declined in the first accountability cycle and has not met its original threshold in the second cycle and has not declined by five (5) or more points from its accountability cycle two (2) baseline, then its performance judgment shall be "in decline" for cycle two (2).

(2) If a school or district's performance judgment for accountability cycle one (1) was "improving", it met its original threshold in cycle two (2), but it did not meet its cycle two (2) threshold and did not decline below its cycle 2 baseline, its performance judgment for cycle two (2) shall be "improving".

(3) A school or district shall be determined to meet its original threshold when the average of its reading, mathematics, writing, science, social studies and noncognitive indices for accountability cycle two (2) is equal to or greater than its threshold for cycle one (1).

Section 7. [6-] Certified staff in a school or school district shall earn the minimum reward amount when the school or school district's growth [average] accountability index for the accountability cycle [biennium] exceeds its threshold by one (1) point and when at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher. Unless the school or district has ten (10) percent or less of its students scoring in the novice range on average during the first two (2) years of the accountability cycle and maintains or reduces this percent in the last two (2) years of the accountability cycle, the novice reduction shall be required in order to receive rewards.

Section 8. [6-] Certified staff in a school or school district shall earn the maximum reward amount when the school or school district's growth [average] accountability index for the accountability cycle [biennium] exceeds its threshold by one (1) point plus the difference between the threshold and the baseline and when at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher. Unless the school or district has ten (10) percent or less of its students scoring in the novice range on average during the first two (2) years of the accountability cycle and maintains or reduces this percent in the last two (2) years of the accountability cycle, the novice reduction shall be required in order to receive rewards.

Section 9. [7-] Fifty-one (51) reward levels are established as follows:

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REWARD LEVELS ONE(1) TO FIFTY-ONE (51)

| Reward Level | Reward Criteria | Reward Index <u>Example</u> | Amount |
|--------------|---|--------------------------------|----------------|
| One | One point above threshold | 38.00 | 50% of maximum |
| Two | One point above threshold plus 2% of difference between threshold and baseline | 38.14 | 51% of maximum |
| Three | One point above threshold plus 4% of difference between threshold and baseline | 38.28 | 52% of maximum |
| Four | One point above threshold plus 6% of difference between threshold and baseline | 38.42 | 53% of maximum |
| Five | One point above threshold plus 8% of difference between threshold and baseline | 38.56 | 54% of maximum |
| Six | One point above threshold plus 10% of difference between threshold and baseline | 38.70 | 55% of maximum |
| Seven | One point above threshold plus 12% of difference between threshold and baseline | 38.84 | 56% of maximum |
| Eight | One point above threshold plus 14% of difference between threshold and baseline | 38.98 | 57% of maximum |
| Nine | One point above threshold plus 16% of difference between threshold and baseline | 39.12 | 58% of maximum |
| Ten | One point above threshold plus 18% of difference between threshold and baseline | 39.26 | 59% of maximum |
| Eleven | One point above threshold plus 20% of difference between threshold and baseline | 39.40 | 60% of maximum |
| Twelve | One point above threshold plus 22% of difference between threshold and baseline | 39.54 | 61% of maximum |
| Thirteen | One point above threshold plus 24% of difference between threshold and baseline | 39.68 | 62% of maximum |
| Fourteen | One point above threshold plus 26% of difference between threshold and baseline | 39.82 | 63% of maximum |
| Fifteen | One point above threshold plus 28% of difference between threshold and baseline | 39.96 | 64% of maximum |
| Sixteen | One point above threshold plus 30% of difference between threshold and baseline | 40.10 | 65% of maximum |
| Seventeen | One point above threshold plus 32% of difference between threshold and baseline | 40.24 | 66% of maximum |
| Eighteen | One point above threshold plus 34% of difference between threshold and baseline | 40.38 | 67% of maximum |
| Nineteen | One point above threshold plus 36% of difference between threshold and baseline | 40.52 | 68% of maximum |
| Twenty | One point above threshold plus 38% of difference between threshold and baseline | 40.66 | 69% of maximum |
| Twenty-one | One point above threshold plus 40% of difference between threshold and baseline | 40.80 | 70% of maximum |
| Twenty-two | One point above threshold plus 42% of difference between threshold and baseline | 40.94 | 71% of maximum |
| Twenty-three | One point above threshold plus 44% of difference between threshold and baseline | 41.08 | 72% of maximum |
| Twenty-four | One point above threshold plus 46% of difference between threshold and baseline | 41.22 | 73% of maximum |
| Twenty-five | One point above threshold plus 48% of difference between threshold and baseline | 41.36 | 74% of maximum |
| Twenty-six | One point above threshold plus 50% of difference between threshold and baseline | 41.50 | 75% of maximum |
| Twenty-seven | One point above threshold plus 52% of difference between threshold and baseline | 41.64 | 76% of maximum |
| Twenty-eight | One point above threshold plus 54% of difference between threshold and baseline | 41.78 | 77% of maximum |
| Twenty-nine | One point above threshold plus 56% of difference between threshold and baseline | 41.92 | 78% of maximum |
| Thirty | One point above threshold plus 58% of difference between threshold and baseline | 42.06 | 79% of maximum |
| Thirty-one | One point above threshold plus 60% of difference between threshold and baseline | 42.20 | 80% of maximum |
| Thirty-two | One point above threshold plus 62% of | 42.34 | 81% of maximum |

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| | | | |
|--------------|--|-------|-----------------|
| | difference between threshold and baseline | | |
| Thirty-three | One point above threshold plus 64% of difference between threshold and baseline | 42.48 | 82% of maximum |
| Thirty-four | One point above threshold plus 66% of difference between threshold and baseline | 42.62 | 83% of maximum |
| Thirty-five | One point above threshold plus 68% of difference between threshold and baseline | 42.76 | 84% of maximum |
| Thirty-six | One point above threshold plus 70% of difference between threshold and baseline | 42.90 | 85% of maximum |
| Thirty-seven | One point above threshold plus 72% of difference between threshold and baseline | 43.04 | 86% of maximum |
| Thirty-eight | One point above threshold plus 74% of difference between threshold and baseline | 43.18 | 87% of maximum |
| Thirty-nine | One point above threshold plus 76% of difference between threshold and baseline | 43.32 | 88% of maximum |
| Forty | One point above threshold plus 78% of difference between threshold and baseline | 43.46 | 89% of maximum |
| Forty-one | One point above threshold plus 80% of difference between threshold and baseline | 43.60 | 90% of maximum |
| Forty-two | One point above threshold plus 82% of difference between threshold and baseline | 43.74 | 91% of maximum |
| Forty-three | One point above threshold plus 84% of difference between threshold and baseline | 43.88 | 92% of maximum |
| Forty-four | One point above threshold plus 86% of difference between threshold and baseline | 44.02 | 93% of maximum |
| Forty-five | One point above threshold plus 88% of difference between threshold and baseline | 44.16 | 94% of maximum |
| Forty-six | One point above threshold plus 90% of difference between threshold and baseline | 44.30 | 95% of maximum |
| Forty-seven | One point above threshold plus 92% of difference between threshold and baseline | 44.44 | 96% of maximum |
| Forty-eight | One point above threshold plus 94% of difference between threshold and baseline | 44.58 | 97% of maximum |
| Forty-nine | One point above threshold plus 96% of difference between threshold and baseline | 44.72 | 98% of maximum |
| Fifty | One point above threshold plus 98% of difference between threshold and baseline | 44.86 | 99% of maximum |
| Fifty-one | One point above threshold plus 100% of difference between threshold and baseline | 45.00 | 100% of maximum |

Section 10. [8-] Sanctions shall be applied to schools and school districts pursuant to KRS 158.6455(3)-(7) and ~~the definitions provided in Section 1(9), (10), and (11) of~~ this administrative regulation.

Section 11. [9-] Reward Amounts. The maximum reward amount shall be ten (10) percent of the average (mean) salary of the certified personnel in the five (5) highest paying public school districts in Kentucky. This average shall be weighted by the number of certified personnel in each of these five (5) districts. The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed 1.75% of the total amount of total funds paid to certificated personnel within Kentucky's public schools during the last year of the accountability cycle. If the reward levels described in this section will result in the allocation of funds that exceed this amount, the reward for each school or school district shall be reduced proportionately.

Section 12. When, as a result of a change in service area boundaries or local policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (.8), the school shall be considered a reconfigured school.

Section 13. A school that is considered a reconfigured school in the first year of an accountability cycle shall be treated as if not reconfigured, with the exception that the noncognitive index for the district from the previous year at the corresponding level (elementary, middle, or high school) shall be substituted for that school's noncognitive data, beginning with accountability cycle 3.

Section 14. (1) A school that is considered a reconfigured school in the second year of the accountability cycle shall be offered the option of having its baseline calculated from the second year of the accountability cycle, as opposed to the normal weighted average of the first two (2) years of the cycle, with the noncognitive index for the district from the previous year at the corresponding level (elementary, middle, or high school) substituted for that school's noncognitive data beginning with accountability cycle 3.

(2) A school that is considered a reconfigured school in the second year of an accountability cycle shall have the option of applying to itself the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions were to be applied at the district level.

Section 15. A school that is considered a reconfigured school in the third or fourth year of an accountability cycle shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions were to be applied at the district level.

Section 16. Reconfigured schools that have contained more than one (1) level (elementary, middle, and high school) and are reconfigured by removing an entire level of accountability grades may request that the portion of the school remaining stable be considered normally within the accountability system using its established historical data.

Section 17. Schools in transitions because of new buildings being built or because of new policies affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data so long as the request does not require the tracking of individual student data. This shall require the approval of all affected school councils (or the principal if a school is not required to have a council) and the superintendent of the district.

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

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: 176 school districts.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: N/A

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Bureau of Learning Results Services

(Amendment)

703 KAR 4:010. The formula for determining successful schools.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 gives the Kentucky Board of Education ~~[State Board for Elementary and Secondary Education]~~ the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and for certified staff who are not assigned to a school in a local school district. This administrative regulation establishes procedures for determining successful schools and districts. [Successful schools must be defined in terms of student achievement of the goals set forth in KRS 158.645, and these goals were adopted by the State Board for Elementary and Secondary Education on December 10, 1991, pursuant to KRS 158.6451. Finally, successful schools must be defined with reference to the statewide assessment program set forth in KRS 158.6453.]

Section 1. Definitions. (1) "Academic index" means the statistic which describes school success on the cognitive goals set forth in KRS 158.6451(1)(b).

(2) "Accountability cycle" means a four (4) year period of which the first two (2) years furnish the baseline data and the second two (2) years furnish the growth index data.

(3) "Accountability index" means the statistic which is the combination of the academic and noncognitive indices for a school.

(4) "Alternate portfolio" means that component of the assessment system designed for students who cannot with all assistance and adaptive devices available participate in the regular assessment process.

(5) "Baseline" means the accountability index score which describes the school's percentage of successful students during the

first two (2) years of each four (4) year accountability cycle.

(6) "Common open-ended questions" means assessment items which are taken by all students in the accountability grades and which require written answers.

(7) "Declines by less than five (5) percent" means obtains an average accountability index which is less than its baseline for that accountability cycle but which is not five (5) or more points below its baseline, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(8) "Declines by five (5) percent or more" means obtains an average accountability index for an accountability cycle which is five (5) or more points below its baseline for that cycle and obtains a year two (2) accountability index below its improvement goal for that cycle.

(9) "Improvement goal" or "threshold" means the accountability index score which describes the amount of growth required for a school or school district for the accountability cycle.

(10) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its improvement goal for that accountability cycle, and obtains a year two (2) accountability index below the improvement goal for that cycle.

(11) "Matrix-sampled open-ended questions" means assessment items which are taken by a sample of students and which require written answers.

(12) "Noncognitive index" means the statistic which describes school success on the noncognitive goals set forth in KRS 158.6451(1)(c), (d), (e), and (f).

(13) "Percentage of successful students" means the accountability index.

(14) "Performance events" means assessment tasks that require students to apply what they have learned in a real-life context.

(15) "Performance levels" means categories of student learning in each of the content areas, i.e., novice, apprentice, proficient, or distinguished.

(16) "Portfolio scores" means the scores assigned by teachers, or scores reassigned through portfolio scoring review procedures, to a collection of a student's best work in a given content area.

(17) "Year two (2) accountability index" means the accountability index a school or school district obtains in the last year of an accountability cycle. ["Accountability index" means the statistic which is the combination of the academic and noncognitive indices for a school.

(2) "Baseline" means the accountability index score which describes the school's percentage of successful students at the beginning of each biennium.

(3) "Academic index" means the statistic which describes school success on the cognitive goals set forth in KRS 158.6451(1)(b).

(4) "Common open-ended questions" means assessment items which are taken by all students in the accountability grades and which require written answers.

(5) "Declines by five (5) percent or more" means obtains an average accountability index for the biennium which is five (5) or more points below its baseline that is established at the beginning of the biennium, is based on performance during the previous biennium, and obtains a year two (2) accountability index below its improvement goal for the biennium.

(6) "Declines by less than five (5) percent" means obtains an average accountability index which is less than its baseline for that biennium, but which is not five (5) or more points below its baseline and obtains a year two (2) accountability index below the improvement goal for the biennium.

(7) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its improvement goal assigned at the beginning of that biennium, and obtains a year two (2) accountability index below the improvement goal for the biennium.

(8) "Matrix-sampled open-ended questions" means assessment

items which are taken by a sample of students and which require written answers.

(9) "Noncognitive index" means the statistic which describes school success on the noncognitive goals set forth in KRS 158.6451(1)(c), (d), (e), and (f).

(10) "Percentage of successful students" means the accountability index.

(11) "Performance events" means assessment tasks that require students to apply what they have learned in a real-life context.

(12) "Performance levels" means categories of student learning in each of the content areas, i.e., novice, apprentice, proficient, or distinguished.

(13) "Portfolio scores" means the scores assigned by teachers, or scores reassigned through portfolio scoring review procedures, to a collection of a student's best work in a given content area.

(14) "Improvement goal" means the accountability index score which describes the amount of growth required for a school or school district for the biennium.

(15) "Alternate portfolio" means that component of the assessment system designed for students who cannot with all assistance and adaptive devices available participate in the regular assessment process.

(16) "Year two (2) accountability index" means the accountability index a school or school district obtains in the second year of the biennium.]

Section 2. The data used in the formula for determining successful schools shall be the academic and noncognitive data gathered in the statewide assessment program during each accountability cycle [biennium] pursuant to KRS 158.6453.

Section 3. For the 1992-94 accountability cycle [biennium] the baseline shall be based on data from the 1991-92 assessment program. For subsequent accountability cycles [biennia] the baseline shall be based on the weighted average of the first two (2) years of assessment data of the four (4) year accountability cycle [from the most recent previous biennium].

Section 4. The points assigned to each performance level for purposes of computing the academic indices shall be: novice = zero; apprentice = two (2); proficient = five (5); and distinguished = seven (7).

Section 5. For purposes of computing the academic index the data shall be transformed to a scale such that a school with all of its students at the novice level shall receive a score of zero and a school with all of its students at the proficient level shall receive a score of 100.

Section 6. Computing the academic index for each content area (writing, reading, mathematics, science, social studies, arts and humanities, and practical living/vocational studies) shall require determining the percentage of students at each performance level with the following weighting and combining of data:

(1) For the 1991-92 to 1993-94 accountability cycle:

(a) Writing: portfolio scores - 100 percent;

(b) [(2)] Reading; common open-ended questions - fifty (50) percent, and matrix-sampled open-ended questions - fifty (50) percent;

(c) [(3)] Mathematics:

[(a) Grade 4:] common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent.

[(b) For the 1992-94 Biennium, Grade 8 and Grade 12 mathematics: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, performance events - twenty (20) percent, and mathematics portfolio scores - zero

percent.

~~(c) For the 1994-96 Biennium, Grade 8 and Grade 12 mathematics: common open-ended questions - thirty (30) percent, matrix-sampled open-ended questions - thirty (30) percent, performance events - ten (10) percent, and mathematics portfolio scores - thirty (30) percent;~~

~~(d) [(4)] Science: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent;~~

~~(e) [(5)] Social studies: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent;~~

~~(2) For the 1992-93 to 1995-96 accountability cycle:~~

~~(a) Writing: portfolio - 100 percent;~~

~~(b) Reading: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;~~

~~(c) Mathematics: for grade 4: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent; and for grades 8 and 12: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - seventy (70) percent, and mathematics portfolio scores - thirty (30) percent;~~

~~(d) Science: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;~~

~~(e) Social studies: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent.~~

~~(f) [(6)] Arts and humanities: matrix-sampled open-ended questions - 100 [seventy (70)] percent[, and performance events - thirty (30) percent]; and~~

~~(g) [(7)] Practical living/vocational studies: matrix-sampled open-ended questions - 100 percent, [eighty (80) percent, and performance events - twenty (20) percent];~~

~~(3) For the 1994-95 to 1997-98 accountability cycle:~~

~~(a) Writing: portfolio scores - seventy-five (75) percent, writing prompt - twenty-five (25) percent;~~

~~(b) Reading: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;~~

~~(c) Mathematics: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;~~

~~(d) Science: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;~~

~~(e) Social studies: common open-ended questions and matrix-sampled open-ended questions statistically combined on a single scale - 100 percent;~~

~~(f) Arts and Humanities: matrix-sampled open-ended questions - 100 percent; and,~~

~~(g) Practical living/vocational studies: matrix-sampled open-ended questions - 100 percent.~~

Section 7. Alternate Portfolios. For the 1992-93 to 1995-96 accountability cycle and subsequent cycles, scores from alternate portfolios shall be included in the academic indices so that the data from each alternate portfolio completed by students eligible to participate in this assessment component contributes the same weight to the academic component of the accountability index as would a student participating in the regular components of the assessment program. [This shall be done by considering each alternate portfolio student's scores on all common and two (2) matrix items in all subject areas, on writing and mathematics portfolio, and on a practical living/vocational studies performance event which shall be the same as that student's alternate portfolio score.]

Section 8. Once the percentage of students at each performance level in each content area has been calculated, each percentage shall be multiplied by the appropriate points described in Section 4 of this administrative regulation and transformed to the scale described in Section 5 of this administrative regulation.

Section 9. Components of Noncognitive Index. The values for attendance rate and successful transition to adult life rate shall be the actual percentage reported. The values for retention rate and dropout rate shall be 100 minus the actual percentage reported.

Section 10. The weights assigned to each noncognitive variable shall be:

(1) Grade 4: attendance rate - eighty (80) percent and retention rate - twenty (20) percent;

(2) Grade 8: attendance rate - forty (40) percent, retention - forty (40) percent, and dropout rate - twenty (20) percent; and

(3) Grade 12: attendance rate - twenty (20) percent, retention - five (5) percent, dropout rate - thirty-seven and five-tenths (37.5) percent, and transition rate - thirty-seven and five-tenths (37.5) percent.

(4) Beginning with the accountability index calculated for the 1994-95 school year, noncognitive data shall be calculated using the data from the previous school year.

Section 11. To compute the noncognitive index the weights for each noncognitive variable described in Section 10 of this administrative regulation shall be multiplied by the value for each noncognitive variable described in Section 9 of this administrative regulation.

Section 12. To compute the accountability index for the 1991-92 to 1993-94 accountability cycle, the academic index for each content area and the noncognitive index shall be weighted at one-sixth (1/6) of the overall index. To compute the accountability index for the 1992-93 to 1995-96 accountability cycle and subsequent cycles the academic index for each content area and the noncognitive index shall be calculated by summing the weighted indices as follows:

| | Weight |
|-------------------------------------|--------|
| Reading Index | 14 |
| Mathematics Index | 14 |
| Science Index | 14 |
| Social Studies | 14 |
| Writing | 14 |
| Arts and Humanities | 7 |
| Practical Living/Vocational Studies | 7 |
| Noncognitive Index | 16 |

Section 13. A school or local district's accountability index shall be calculated by aggregating the data from all of the students in that school or district.

Section 14. A school or local district's improvement goal shall be its baseline index [as calculated per Section 13 of this administrative regulation] plus one-tenth (0.1) the difference between 100 and the school's or district's baseline index.

Section 15. To determine whether a school or district is successful, its accountability index for the last two (2) years of the accountability cycle [biennium] shall be averaged and compared to its improvement goal [calculated from the results of the previous biennium]. Schools and districts whose average accountability index is equal to or greater than its improvement goal shall be declared successful.

This is to certify that the chief state school officer has reviewed

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and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: 176 school districts.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Bureau of Learning Results Services

(Amendment)

703 KAR 4:090. Statewide assessment and accountability program; school building and local district appeal of performance judgments.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455(8) requires the establishment of procedures for appeals of performance judgments considered to be unfair resulting in the distribution of rewards or the applications of sanctions as specified in KRS 158.6455.

Section 1. Definitions. (1) "Accountability index" means the statistic that is the combination of the academic and noncognitive indices for the school or district.

(2) "Baseline accountability index" means the accountability index score that describes the school or school district's percentage of successful students during the first two (2) years of each four (4) year accountability cycle.

(3) "Growth accountability index" means the accountability index score that describes the school or school district's percentage of successful students during the last two (2) years of each four (4) year accountability cycle.

(4) "Performance judgment" means the decision to declare a school or school district:

(a) Eligible for rewards;

(b) Successful;

(c) Improving;

(d) In decline; or

(e) In crisis. ["Accountability index" means the statistic that is the average of the cognitive and noncognitive indices for the school.

(2) "Baseline accountability index" means the accountability index score that describes the school or school district's percentage of successful students at the beginning of the biennium.

(3) "Performance judgment" means the decision to declare a school or school district:

(a) Eligible for rewards (level 5);

(b) Successful (level 4);

(c) As not meeting its threshold (level 3);

(d) In decline (level 2); or

(e) In crisis (level 1).]

Section 2: (1) A written request for a review of a performance judgment shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the performance judgments to the public.

(2) An additional twenty (20) working days shall be permitted to appeal a revised performance judgment if for any reason there are revisions in the performance judgment of a school or school district. If the performance judgment is subsequently revised, a written

request for a review of a performance judgment shall be submitted to the Commissioner of Education within thirty (30) days after the school or district has received the official notification of the revised performance judgment.

(3) For districts, the request shall be signed by the superintendent upon the approval of the school board. For schools, the request shall be signed by the principal upon approval of the school council. If there is no school council, the request shall also be signed by the superintendent, upon approval of the school board.

(4) ~~((2))~~ The appeal of a performance judgment shall clearly identify the basis for the wrongful effect on the:

- (a) Baseline accountability index;
- (b) Growth accountability index; or
- (c) Baseline accountability index being established for the next accountability cycle ~~(biennium)~~.

(5) ~~((3))~~ The appeal shall detail the requested adjustment to be made to one (1) or more of these indices.

(6) With the advice of the State Advisory Committee for Education Improvement, ~~((4))~~ the Kentucky Department of Education staff shall review the request against the standards set forth in KRS 158.6455, determine if additional information is required, and if the appeal is disputed, it shall submit the request to the hearing officer for the Kentucky Board of Education ~~(with a recommendation to the State Advisory Committee for Educational Improvement)~~.

(7) ~~((5))~~ The hearing officer ~~(State Advisory Committee for Educational Improvement)~~ shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B. ~~(communicate in writing its summary findings and recommendations to both the party appealing the judgment and to the Commissioner of Education. Within thirty (30) working days, the commissioner's office shall forward the committee's recommendation to the State Board for Elementary and Secondary Education with a recommendation to accept, reject, or modify the committee summary report, and notify the appealing party in writing.)~~

~~((6))~~ The appealing party shall have ten (10) days from when the report is received to submit written exceptions and responses to the state board.]

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

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: 176 school districts.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Learning Program Development (Amendment)

704 KAR 3:345. Evaluation guidelines.

RELATES TO: KRS 156.101

STATUTORY AUTHORITY: KRS 156.070, 156.101

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.101 requires the Kentucky [State] Board of [for Elementary and Secondary] Education to develop written guidelines for local school districts to follow in developing and implementing an evaluation system. This administrative regulation establishes the requirements for the

evaluation programs and policies of local school districts.

Section 1. Definitions. (1) "Administrator" means any certified staff person who devotes the majority of his employed time to service as a principal, assistant principal, supervisor, coordinator, director, assistant director, administrative assistant, finance officer, pupil personnel worker, guidance counselor, or school business administrator including the superintendent and any assistant, associate, or deputy superintendent. ["Teacher" means any certified staff person who directly instructs students.]

(2) "Conference" means a meeting involving the evaluator and the certified employee evaluated for the purpose of providing feedback from the evaluator, analyzing the results of observation(s) and other information to determine accomplishments and areas for growth leading to establishment or revision of a professional growth plan. ["Administrator" means any certified staff person who devotes the majority of his employed time to service as a principal, assistant principal, supervisor, coordinator, director, assistant director, administrative assistant, finance officer, pupil personnel worker, guidance counselor, or school business administrator including the superintendent and any assistant, associate, or deputy superintendent.]

(3) "Evaluation" means the process of assessing or determining the effectiveness of the performance of the certified employee in a given teaching and learning or leadership and management situation, based on predetermined criteria, through periodic observation and other documentation such as portfolios, peer reviews, products and performances. Evaluation shall also include the establishment and monitoring of a professional growth plan. ["Other support staff" means any certified staff other than teacher or administrator.]

(4) "Formative evaluation" means a continuous cycle of collecting evaluation information and interacting and providing feedback with suggestions regarding the certified employee's professional growth and performance. ["Evaluation" means the process of assessing or determining the effectiveness of the performance of the certified employee in a given teaching and learning or leadership and management situation, based on predetermined criteria, through periodic observation and other documentation such as portfolios, peer reviews, products and performances. Evaluation shall also include the establishment and monitoring of a professional growth plan.]

(5) "Indicators" means measurable behaviors and outcomes which demonstrate performance criteria. ["Formative evaluation" means a continuous cycle of collecting evaluation information and interacting and providing feedback with suggestions regarding the certified employee's professional growth and performance.]

(6) "Job category" means term used to signify a group or class of positions with closely related functions (e.g., principal, coordinator, director). ["Summative evaluation" means the summary of, and conclusions from, all evaluation data, including but not limited to the formative evaluation data. The summative evaluation occurs at the end of an evaluation cycle. Summative evaluation includes a conference involving the evaluator and the evaluated certified employee, and a written evaluation report.]

(7) "Observation" means a process of gathering information in the performance of duty, based on predetermined criteria in the district plan.

(8) "Other support staff" means any certified staff other than teacher or administrator. ["Conference" means a meeting involving the evaluator and the certified employee evaluated for the purpose of providing feedback from the evaluator, analyzing the results of observation(s) and other information to determine accomplishments and areas for growth leading to establishment or revision of a professional growth plan.]

(9) "Performance criteria" means performance areas, skills, or outcomes on which the certified employee shall be evaluated based on position and the district plan.

(10) "Position" means a professional role in the school district (e.g., teacher, secondary principal, supervisor of instruction). ["Indica-

tors" means measurable behaviors and outcomes which demonstrate performance criteria.]

(11) "Professional growth plan" means a plan whereby the person being evaluated establishes goals for enrichment and development and the assistance of the evaluator is identified. The individualized plan includes objectives, a plan for achieving the objectives and method for evaluating success. The individualized professional growth plan shall be aligned with specific goals and objectives of the school improvement and professional development or transformation plans. ["Standards of performance" means acceptable qualitative or quantitative level of performance expected of effective teachers or administrators.]

(12) "Standards of performance" means acceptable qualitative or quantitative level of performance expected of effective teachers or administrators. ["Position" means a professional role in the school district (e.g., teacher, secondary principal, supervisor of instruction).]

(13) "Summative evaluation" means the summary of, and conclusions from, all evaluation data, including but not limited to the formative evaluation data. The summative evaluation occurs at the end of an evaluation cycle. Summative evaluation includes a conference involving the evaluator and the evaluated certified employee, and a written evaluation report. ["Job category" means term used to signify a group or class of positions with closely related functions (e.g., principal, coordinator, director).]

(14) "Teacher" means any certified staff person who directly instructs students. ["Professional growth plan" means a plan whereby the person being evaluated establishes goals for enrichment and development and the assistance of the evaluator is identified. The individualized plan includes objectives, a plan for achieving the objectives and method for evaluating success. The individualized professional growth plan shall be aligned with specific goals and objectives of the school improvement and professional development or transformation plans.]

Section 2. Each local school district shall have an evaluation plan and procedures approved by the Kentucky [State] Board of [for Elementary and Secondary] Education. Approval of the plan and procedures shall be for the purpose of certification as to the compliance of each specific school district's evaluation plan with the broad guidelines set forth herein.

Section 3. The local school district shall have a written policy for the evaluation of all certified employees consistent with KRS 156.101.

Section 4. (1) An evaluation committee consisting of equal numbers of teachers and administrators shall develop evaluation procedures and forms. The evaluation procedures and forms shall be designed to foster professional growth and to support individual personnel decisions.

(2) The procedures shall provide for both formative evaluation and summative evaluation and shall include the following elements:

(a) The immediate supervisor of the certified school employee shall be designated the primary evaluator. Additional trained administrative personnel may be used to observe and provide information to the primary evaluator.

(b) All monitoring or observations of performance of a certified employee shall be conducted openly and with the full knowledge of the teacher or administrator. The local district may determine the length and frequency and nature of observations conducted by an evaluator.

(c) The evaluation system shall include a professional growth plan aligned with specific goals and objectives of the school improvement and professional development transformation plans and shall be reviewed annually.

(d) Evaluation shall include formative conferences between the evaluator and the person evaluated within one (1) work week following each observation. In addition, the summative conference

shall be held at the end of the evaluation cycle and include all evaluation data.

(e) Evaluation with multiple observations shall occur annually for each nontenured certified employee. The formative data collected during the beginning teacher internship period may be utilized in summative evaluation of the intern.

(f) Multiple observations shall be conducted with tenured, certified employees whose observation results are unsatisfactory.

(g) Summative evaluation shall occur a minimum of once every three (3) year period for each tenured teacher.

(h) Summative evaluation shall occur annually for administrators.

(i) All evaluations of certified employees below the level of the district superintendent shall be in writing on an evaluation form and become a part of the official personnel record.

(j) All observations shall include documentation of information to be used in determining the performance of the evaluatee.

(k) The evaluation system shall provide an opportunity for a written response by the evaluatee and the response shall become a part of the official personnel record.

(l) A copy of the evaluation shall be provided to the evaluatee.

Section 5. (1) The evaluation forms shall include a list of performance criteria characteristic of effective teaching or administrative practices. The performance criteria shall include the following:

(a) Performs professional responsibilities and duties as outlined in the job description including regular attendance and punctuality;

(b) Demonstrates effective classroom or staff management skills;

(c) Uses appropriate research-based instructional strategies and processes effectively;

(d) Demonstrates effective interpersonal, communication, and collaboration skills among peers, subordinates, students and parents;

(e) Demonstrates knowledge of subject matter or administrative techniques;

(f) Plans, implements, and evaluates instructional or administrative activities. Under each criterion, specific descriptors or indicators that can be measured and recorded shall be listed. In addition, standards of performance shall be established for each criterion;

(g) Teaches in a manner that is consistent with missions to which school/councils, district boards of education, and the Kentucky [State] Board of [for Elementary and Secondary] Education are committed.

(2) All certified school personnel shall be made aware no later than the end of the first month of reporting for employment for each school year of the criteria on which they are to be evaluated.

(3) Evaluation forms or instruments shall be specific for each position or job category. Other forms for observation and pre- and postconferences may be used at the discretion of the local district.

Section 6. (1) All primary evaluators, with the exception of district board of education members, shall be trained, tested, and certified.

(2) Training shall:

(a) Include skill development in the use of the local evaluation process. Each local district shall conduct this training;

(b) Include skill development in the identification of effective teaching and management practices, effective observation and conferencing techniques, establishing and assisting with certified employee professional growth plans, and summative evaluation techniques relative to the academic expectations in 703 KAR 4:060 [learner outcomes]. This training shall be conducted by providers who have been approved by the Kentucky [State] Board of [for Elementary and Secondary] Education as trainers for the Instructional Leadership Improvement Program;

(c) Be provided by the Kentucky Department of Education for all new administrators who are designated as evaluators. Other administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may participate also; and

(d) Be approved as a part of the evaluation plan and procedures submitted to the Kentucky [State] Board of [for Elementary and Secondary] Education.

Secondary] Education.

(3) Testing shall:

(a) Include a cognitive test of research-based and professionally accepted teaching and management practices and effective evaluation techniques listed in subsection (2)(b) of this section; and

(b) Be conducted by agencies approved by the State Department of Education.

(4) Initial certification as an evaluator shall be issued by the Kentucky Department of Education upon completion of the required evaluation training program and successful completion of testing.

(5)(a) Continued certification as an evaluator shall be contingent upon the completion of a minimum twelve (12) hours of evaluation training every two (2) years ~~[beginning July 1, 1988]~~.

(b) This training shall be in any one, or a combination, of the following skill areas:

1. Use of the local evaluation process;

2. Identification of effective teaching and management practices;

3. Effective observation and conferencing techniques;

4. Establishing and assisting with certified employee professional growth plans; or

5. Summative evaluation techniques.

(6) Each local district shall designate a contact person responsible for monitoring evaluation training and implementing the evaluation plan.

Section 7. For appeals to the local evaluation appeals panel, each local evaluation plan shall provide for the following:

(1) Right to a hearing as to every appeal; and

(2) Opportunity reasonably in advance of the hearing for the evaluator and evaluatee to adequately review all documents that are to be presented to the evaluation appeals panel; and

(3) Right to presence of evaluatee's chosen representative.

Section 8. (1) The local board of education shall ~~[annually]~~ review as needed the evaluation plan to ensure compliance with KRS 156.101 and this ~~[these]~~ administrative regulation.

(2) If substantive changes are made to the evaluation plan, the local board of education shall utilize the evaluation committee, as provided for in Section 4 of this administrative regulation, in formulating the revisions.

(3) Examples of substantive change include:

(a) Change in cycle;

(b) Observation frequency;

(c) Forms; and

(d) Appeals procedures.

(4) Revisions to the plan shall be reviewed and approved by the local board of education and submitted to the Kentucky [State] Board of [for Elementary and Secondary] Education for approval.

Section 9. (1) Any certified employee who feels that the local district is not properly implementing the evaluation plan according to the way it was approved by the Kentucky [State] Board of [for Elementary and Secondary] Education shall have the opportunity to appeal to the Kentucky [State] Board of [for Elementary and Secondary] Education.

(2) The appeal procedures shall be as follows:

(a) The Kentucky [State] Board of [for Elementary and Secondary] Education shall appoint a committee of three (3) state board members to serve on the State Evaluation Appeals Panel. Its jurisdiction shall be limited to procedural matters already addressed by the local appeals panel required by KRS 156.101(10). The panel shall have no jurisdiction relative to complaints involving the professional judgmental conclusions of evaluations, and the panel's review shall be limited to the record of proceedings at the local district level.

(b) No later than thirty (30) days after the final action or decision at the local district level, the certified employee may [shall] submit a written request to the chief state school officer for a review [hearing]

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before the State Evaluation Appeals Panel. Appeals not filed in a timely manner shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with this request.

(c) ~~[The State Evaluation Appeals Panel, or the Department of Education at its direction shall review the complaint and investigate to determine if a hearing should be granted.~~

~~(d) If a hearing is granted, all involved parties shall have an opportunity to speak before the appeals panel.~~

~~(e) Any briefs, written statements, and other documents which a party wants considered by the State Evaluation Appeals Panel shall be filed with the panel and served on the opposing party at least twenty (20) ~~(ten (10))~~ days prior to the scheduled review ~~(hearing)~~.~~

~~(d) ~~(f)~~ A decision of the appeals panel shall be rendered within fifteen (15) working days after the review ~~(a hearing)~~.~~

~~(e) ~~(g)~~ A determination of noncompliance shall render the evaluation void, and the employee shall have the right to be reevaluated.~~

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

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert N. Trahan, Jr.

(1) Type and number of entities affected: All certified personnel in the 176 school districts of the Commonwealth.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects on the competition) for the:

1. First year following implementation: The proposed change will reduce paperwork load due to change in KRS 156.101 deleting the requirement to annually review evaluation plans. (1996 General Assembly, HB 97).

2. Second and subsequent years: See above item.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The proposed change will reduce paperwork load due to change in KRS 156.101 deleting the requirement to annually review evaluation plans.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is required. Administrative regulation shall be enforced by Department of Education, Division of Professional Development staff.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: N/A

(b) Kentucky: 176 local school districts.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as directed to promulgate by KRS 156.101.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: There does not appear to be any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicating.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. The regulation applies equally to all local school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Professional Standards Board

(Amendment)

704 KAR 20:260. Junior Reserve Officers Training Corps Certification ~~[ROTC personnel]~~.

RELATES TO: KRS 161.020, 161.028 ~~[161.025]~~, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030 ~~[156.070, 156.160]~~

NECESSITY AND FUNCTION: KRS 161.020~~[, 161.025,]~~ and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board ~~[Kentucky Council on Teacher Education and Certification and approved by the State Board of Education]~~. This administrative regulation establishes the Kentucky certification for instructor of the Junior Reserve Officers Training Corps. ~~[an appropriate certificate for a specific professional position.]~~ This administrative regulation is not required by federal law.

Section 1. (1) The certificate for ~~[specialized professional school services endorsed for the position of]~~ senior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant upon completion of the following:

(a) ~~[who has completed]~~ A bachelor's degree from a standard college or university as defined in KRS 161.010;

(b) Official recommendation ~~[who has been officially recom-~~

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mended for the position of senior instructor, Junior Reserve Officers Training Corps, by the appropriate branch of military service;

(c) ~~Contract [upon criteria which includes twenty (20) years military service; and who has been contracted]~~ for this employment by a local school district; and

(d) ~~Recommendation [who is recommended]~~ for certification by the local school superintendent.

(2) ~~[Section 2:] The certificate [endorsement] for senior instructor, Junior Reserve Officers Training Corp, may be renewed for a five (5) year period [continuing service] upon recommendation by the local school superintendent and upon completion of nine (9) semester hours to include the following [curriculum]:~~

~~(a) Human growth and development and learning theory;~~

~~(b) Foundations of education;~~

~~(c) Career development and vocational planning, [general psychology, three (3) semester hours; human growth and development, three (3) semester hours; basic concepts concerning education, two (2) semester hours; English composition, six (6) semester hours; communications (such as speech, creative writing, advanced grammar, journalism) or guidance (such as vocational guidance, guidance and counseling, career orientation), three (3) semester hours.]~~

~~(3) Each five (5) year renewal thereafter shall require the completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.~~

Section 2. ~~[3:] The certificate for [specialized professional school services endorsed for the position of] junior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant upon completion of the following:~~

~~(a) [who has completed] High school graduation, or its equivalence as determined by an acceptable score on the General Education Development Test;~~

~~(b) Official recommendation [who has been officially recommended for the position of junior instructor, Junior Reserve Officers Training Corps,] by the appropriate branch of military service [upon criteria which includes twenty (20) year military service];~~

~~(c) Contract [who has been contracted] for this employment by a local school district; and~~

~~(d) Recommendation [who is recommended] for certification by the local school superintendent.~~

(2) ~~[Section 4:] The certificate [endorsement] for junior instructor, Junior Reserve Officers Training Corps, may be renewed for a two (2) year period [continuing service] upon recommendation by the local school superintendent and upon completion of fifteen (15) semester hours to include the following [curriculum]:~~

~~(a) Human growth and development and learning theory;~~

~~(b) Foundations of education;~~

~~(c) Career development and vocational planning, [general psychology, three (3) semester hours; human growth and development, three (3) semester hours; basic concepts concerning education, two (2) semester hours; English composition, six (6) semester hours; communications (such as speech, creative writing, advanced grammar, journalism) or guidance (such as vocational guidance, guidance and counseling, career orientation), three (3) semester hours.]~~

~~(3) Each two (2) year renewal thereafter shall require completion by September 1 of the year of expiration of fifteen (15) semester hours selected from an associate degree program from a standard college or university as defined in KRS 161.010.~~

~~(4) Upon completion of the associate degree with a 2.5 grade point standing, the certificate for junior instructor, Junior Reserve Officers Training Corps, shall be renewed for a five (5) year period. Each five (5) year renewal thereafter shall require completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.~~

~~[Section 5. This administrative regulation shall become effective for all Junior Reserve Officers Training Corps personnel employed for the 1976-77 school term and thereafter.]~~

ROSA WEAVER, Chair

APPROVED BY AGENCY: September 23, 1996

FILED WITH LRC: September 26, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 22, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dr. Betty Lindsey, Associate Commissioner Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: Candidates for this certificate will be required to meet certification standards outlined in this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No additional cost.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Candidates must file appropriate applications and local districts must maintain appropriate records of personnel qualifications. Official recommendation by the appropriate branch of military service must be secured.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body: The Division of Certification must review applications, issue or deny certificates and maintain records of all transactions. Local districts must secure and maintain military service involvement in this program. Individuals must apply for certification to teach Junior ROTC.

(a) Direct and indirect costs or savings:

1. First year: Costs associated with disseminating program requirements, issuing certificates, and maintaining records.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Office of Teacher Education and Certification must maintain records and issue certificates.

(4) Assessment of anticipated effect on state and local revenues: No impact on state and local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

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(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Qualified instructional personnel are required for the instruction of public school students.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Certification requirements are uniformly applicable to all individuals.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

704 KAR 20:460. Examination prerequisites for principal certification.

RELATES TO: KRS 161.020, 161.027, 161.030

STATUTORY AUTHORITY: KRS 156.070, 161.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board [~~State Board of Education~~] to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for applicants seeking certification as principal, and further requires that [~~effective July 1, 1988,~~] all applicants for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board [~~State Board of Education~~]; and KRS 161.030 rests certification with the Education Professional Standards Board [~~State Board of Education~~]. This administrative regulation specifies the prerequisite tests, minimum scores for successful completion, and establishes a reasonable fee for administration of the prerequisite tests for certification as principal required under KRS 161.027.

Section 1. (1) All new applicants for certification as a school principal, including vocational school principal, shall successfully complete prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal.

(2) All applicants for certification shall [~~be required to~~] successfully complete both the prerequisite examination specified in Section 2 of this administrative regulation and a one (1) year internship program.

Section 2. In order to satisfy the prerequisites for principal certification, each applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:

| (1) NTE Core Battery Tests | Eff. Prior to 1/1/89 | Eff. on 1/1/89 |
|----------------------------|-------------------------|-------------------|
| (a) Communication skills | [643] | 646 |
| (b) General knowledge | [637] | 643 |
| (2) NTE Specialty Test of | [640] | 540 |

Educational Administration
and Supervision

| | |
|--------------------------------------|-----------|
| (3) Kentucky Specialty Test of | 85% |
| Instructional responses & correct | correct |
| Administrative Practices [responses] | responses |

Section 3. Initial applicants for principal certification who have previously [~~within the four (4) years immediately preceding the date of application~~] attained the minimum score required by this administrative regulation on the NTE Core Battery for communication skills or general knowledge [~~or for the NTE Specialty Test of Educational Administration and Supervision~~] may meet requirement[s] for the [~~such~~] test[~~(s)~~] by:

(1) Having score[s] previously recorded at the Kentucky Department of Education for other professional certifications; or

(2) Having the Educational Testing Service (ETS) furnish score report[s] to the Kentucky Department of Education. Requests for the [~~such~~] score report shall [~~s-must~~] comply with all policies and procedures of the ETS.

Section 4. (1) Applicants for certification as principal may take the required NTE tests on any of the dates established by the ETS. Applicants shall [~~must~~] authorize that test results be forwarded to the Kentucky Department of Education by the ETS.

(2) Applicants for certification as principal may take the Kentucky Specialty Test of Instructional and Administrative Practices on any of the dates established by the Kentucky Department of Education. Scoring and reporting of scores shall be the responsibility of the Kentucky Department of Education or its designated agent.

(3) Public announcement of testing dates and locations shall be issued sufficiently in advance to permit registration as required by the ETS and the Kentucky Department of Education.

(4) It shall be the responsibility of each applicant to seek information regarding the dates and location of the tests and to make application for the appropriate examinations prior to the deadlines established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 5. (1) For the required NTE tests, the applicant shall pay all fees assessed by the ETS.

(2) Applicants shall [~~not~~] be assessed a fee of thirty (30) dollars for taking the Kentucky Specialty Test of Instructional and Administrative Practices.

Section 6. Applicants who fail to achieve a minimum score on any of the required tests as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during any regularly-scheduled test administration.

Section 7. (1) Applicants who attain the minimum passing score on all of the prerequisite examinations shall be issued a statement of eligibility for internship by the Education Professional Standards Board [~~Superintendent of Public Instruction~~]. This statement of eligibility for internship shall be valid for a five (5) [~~four (4)~~] year period.

(2) Applicants who do not participate in the required one (1) year internship within the period of eligibility shall reestablish eligibility by repeating and successfully completing all prerequisite examinations in effect at the time of reapplication.

Section 8. (1) Applicants for principal certification who hold a comparable certificate from another state but who have not completed the required written assessments may be issued a temporary certificate effective for one (1) year if the application is accompanied by a copy of their certificate from another state.

(2) If the applicant successfully completes the assessments within

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the year, a certificate shall be issued for an additional four (4) years.

(3) The temporary certificate shall not be extended for those applicants who do not successfully complete the assessments within the year.

Section 9. (1) Initial applicants for principal certification who have completed a preparation program but have not completed all the written assessment requirements prior to having been selected as a principal may be issued a one (1) year temporary certificate. The school superintendent of the employing district shall submit a request for a one (1) year waiver of the principal assessments. The waiver shall be granted only if in the request the superintendent affirms that there was an applicant pool of three (3) or less who met the requirements for selecting a principal.

(2) Upon successful completion of the assessments and the principal internship, a certificate shall be issued for an additional four (4) years.

(3) The temporary certificate shall not be extended beyond the one (1) year period.

Section 10. (1) To provide for confidentiality of information, the Kentucky Department of Education shall report individual scores on the Kentucky Specialty Test of Instructional and Administrative Practices to the individual applicant only. The ~~[Such]~~ scores shall ~~[will]~~ not be released to other individuals or agencies. ~~[In accordance with published policy, the ETS will release scores on the NTE only to recipients designated in writing by applicants.]~~

(2) No scores shall be used by the Kentucky Department of Education in an individually identifiable form other than for purposes of determining eligibility for certification as school principal.

Section 11. On an annual or biennial basis, ~~[0-]~~ the Kentucky Department of Education shall collect and analyze data provided by the Educational Testing Service through NTE Core Battery and Praxis II score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation ~~[on an annual or biennial basis]~~.

ROSA WEAVER, Chair

APPROVED BY AGENCY: September 23, 1996

FILED WITH LRC: October 1, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 22, 1996, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Betty Lindsey, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606; (502) 573-1610, Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Rita Osborne

(1) Type and number of entities affected: All applicants for principal certification in elementary and secondary schools are affected.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Routine reporting.

2. Second and subsequent years: Routine reporting.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$80 savings to each applicant for principal certification who take the assessments required.

2. Continuing costs or savings: \$80 savings to each applicant for principal certification who take the assessments required.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Routine processing of reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: EPSB is charged with implementing KRS 161.027 regarding the testing requirements for principal certification. EPSB can only do so by policymaking through a regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No - same requirements for everyone.

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation (Amendment)

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 34 CFR 361.31(b), 20 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195, 34 CFR 361.31(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 authorizes ~~[directs]~~ the Commissioner, Department of Vocational Rehabilitation to promulgate ~~[prescribe rules and]~~ administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation sets

forth when an order of selection and an economic need test will be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible clients. Federal guidelines for imposition of an order of selection necessitate state policies and practices as a condition for continuation of federal funding. KRS Chapter 13A requires that those policies and practices be promulgated as administrative regulations.

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) "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.

(3) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that is unlikely ~~(not readily amenable to or likely)~~ to be corrected through surgical intervention or medical treatment. Use of the term permanent functional limitation in the agency's order of selection ~~seeks to~~ differentiates between those mental or physical conditions that are usually remedied through the provision of a physical or mental restoration service(s) and those other conditions or disabilities that impose or are likely to impose a permanent loss or substantial reduction in functioning regardless of surgical or medical intervention.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Individual with a the most severe disability ~~[disabilities]~~" means an individual who has a severe disability and who:

(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or

(b) Has serious limitations in four (4) or more functional capacities (i.e., mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

Section 2. Economic Need. Vocational rehabilitation services may be provided subject to economic need, as follows and with consideration of applicable comparable benefits as provided in 781 KAR 1:020, Section 2:

(1) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Books, supplies, tools and equipment for vocational and other training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;

(f) Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;

(g) Postemployment services except as provided in subsection (2)(a) through (m) of this section;

(h) Tuition and initial registration fees for training beyond the baccalaureate level;

(i) Other goods and services which can reasonably be expected to benefit an eligible individual in terms of an employment outcome.

(j) Vehicle and property modifications in excess of \$6,000.

(2) The following services shall be excluded from an economic needs test:

(a) Assessment for determining eligibility and vocational rehabilitation needs;

(b) Counseling and guidance;

(c) Services provided by staff at state-owned and operated rehabilitation facilities;

(d) Placement;

(e) Rehabilitation technology;

(f) Communication assistance in the individual's native language;

(g) Tuition and initial registration fees for vocational and college training up to and including the baccalaureate level;

(h) Supported employment;

(i) Interpreter services for the deaf;

(j) Reader services for the blind;

(k) Personal assistance services;

(l) Tutors, note-takers, and assistive technology educational aides; and

(m) Other training, including driver training, on-the-job training, job coaching, job development and training.

(3) Except as provided in 781 KAR 1:060, clients who do not meet total financial need criteria shall apply 100 percent of the monthly excess household income to their rehabilitation program.

(4) Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for the agency economic needs test in figuring the excess monthly household income.

Section 3. Order of Selection. When the commissioner determines that the agency shall be unable to provide services to all eligible applicants, the agency shall implement the order of selection.

(1) A client previously declared eligible for and receiving vocational rehabilitation services under an individualized written rehabilitation program shall not be affected when the agency implements an order of selection.

(2) The order of selection shall not regulate the provision of information and referral services ~~[counseling, guidance, coordination of comparable benefits, third party payments, or job development and job placement to otherwise eligible individuals].~~

(3) On implementation of the order of selection, the agency shall continue to accept referrals of and applications from individuals with disabilities.

(4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.

(5) All applicants shall be declared eligible or ineligible as appropriate.

(6) Any client entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual may be served. If, however, the priority category is closed, the individual's case shall be held in accepted status until such time as the priority category assigned is opened or the order of selection is lifted.

(7) The order of selection policy shall permit immediate reclassification into a higher priority category whenever circumstances justify the reclassification.

(8) If the agency is unable to provide services to all eligible individuals with severe disabilities, eligible individuals with the most severe disabilities shall be served. If the department is unable to serve all eligible individuals with severe disabilities, eligible individuals with severe disabilities shall be served on a first-applied, first-served basis established by date of application.

(9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection system shall have six (6) priority categories as follows:

(a) Priority I - eligible individuals with a the most severe disability ~~[disabilities]~~.

(b) Priority Category II - eligible individuals with a severe disability who have serious limitations in three (3) functional capacities.

(c) Priority Category III - eligible individuals with a severe disability who have serious limitations in two (2) functional capacities.

[public safety officers with a nonsevere disability sustained in the line of duty.]

(d) Priority Category IV - eligible individuals with a severe disability who have serious limitations in one (1) functional capacity. [nonsevere disability that results in permanent functional limitations and who are served as part of a cooperative funding agreement.]

(e) Priority Category V - eligible individuals with a nonsevere disability that results in permanent functional limitations.

(f) Priority Category VI - all other eligible individuals whose disability is nonsevere.

SAM SERRAGLIO, Commissioner

RODNEY CAIN, Secretary

APPROVED BY AGENCY: October 11, 1996

FILED WITH LRC: October 14, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 10 a.m. Eastern Time in the DVR Training Room, 209 St. Clair, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency by November 19, 1996, 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: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair, Frankfort, Kentucky 40601, (502) 564-4440.

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: All applicants for vocational rehabilitation services from the Department of Vocational Rehabilitation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no direct or indirect savings since any funds conserved would be redistributed among otherwise eligible individuals.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There should be no additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department uses state and federal funds with a match ratio of 78.7 federal to 21.3 state dollars.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) 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.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments:

(11) TIERING: Is 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.

2. State compliance standards. This administrative regulation details the agency standards for an economic needs test and an order of selection for vocational rehabilitation services.

3. Minimum or uniform standards contained in federal mandate. The federal mandate permits a state to restrict access to services based on reasons of economic need; an order of selection is required when sufficient funds are not available to serve all eligible individuals.

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 or imposition of the stricter standards, or additional or different responsibilities or requirements. The Department of Vocational Rehabilitation is financially unable to provide services for all the eligible individuals. An economic needs test and an order of selection must be imposed which will allow available limited funds to be distributed while assuring adequate services will be available to serve individuals with severe disabilities.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Law and Regulatory Compliance
(Amendment)

808 KAR 10:260. Examination requirement for individuals advising the public on securities.

RELATES TO: KRS Chapter 292, 292.310, 292.330

STATUTORY AUTHORITY: KRS 292.330(4), (11)(g), (12)(b)6, 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To better protect the investing public by requiring that all individuals who advise the public regarding the value of securities or the advisability of investing in, purchasing, or selling securities demonstrate their knowledge of the requirements of the law regarding securities by taking a written examination.

Section 1. All individuals, including investment advisers or those who represent investment advisers (investment adviser representatives), who advise the public regarding the value of securities or the advisability of investing in, purchasing, or selling securities shall demonstrate their competence in the law of securities by taking and passing with a minimum score of seventy (70) percent, [either] the Series 63 Uniform Securities Law Examination administered by the National Association of Securities Dealers, [or] the Series 65 Uniform Investment Advisor Law Examination administered by the National Association of Securities Dealers, or the Series 66 Uniform Combined State Law Examination administered by the National Association of Securities Dealers. Each individual who takes the exam shall provide to the commissioner a copy of the notification from the National Association of Securities Dealers informing him of his score on the examination.

Section 2. The following individuals shall not be required to take and pass the examination:

(1) Individuals employed by registered investment advisors that are registered in the Commonwealth of Kentucky with the Department of Financial Institutions pursuant to the Securities Act of Kentucky, KRS Chapter 292, as investment advisors and have been continuously so registered in Kentucky since prior to July 1, 1991, if, the individual employed has [who have] been continuously employed by said Kentucky registered investment advisors since prior to July 1, 1991;

(2) Individuals (including officers, partners, directors, clerical staff) employed by registered investment advisers if those individuals do not themselves advise the public regarding the value of securities or the advisability of investing in, purchasing, or selling securities.

(3) Investment advisers who are exempted from registration under KRS 292.330(1) and those individuals employed by the exempted investment advisers.

Section 3. No registered investment adviser shall employ an individual as an investment adviser or as one who represents an investment adviser unless that individual has complied with this administrative regulation.

LARRY D. LANDER, Commissioner

APPROVED BY AGENCY: October 11, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, November 22, 1996, at 10 a.m., local prevailing time, at The Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five days prior to the hearing, of their intent to attend. If no notification

of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William E. Doyle, Staff Attorney, Department of Financial Institutions, Division of Law and Regulatory Compliance, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact person: William E. Doyle

(1) Type and number of entities affected: Approximately 1,200.

(2) Direct and indirect costs or savings on the: No effect on cost and no savings.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received and no effect.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received and no effect.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating 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: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue neutral.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received. No impact.

(b) Kentucky: No comments received. No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives available.

(8) Assessment of expected benefits: Uniformity and reduced compliance efforts.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All persons affected are

similar in situation.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Amendment)

811 KAR 1:020. Registration and identification of horses.

RELATES TO: KRS 230.630(1), (2), (3), 230.640(2)

STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to provide for the registration, ownership, identification and information concerning horses.

Section 1. Registration. All matters relating to registration of standardbred horses shall be governed by the rules of the United States Trotting Association.

Section 2. Bona Fide Owner or Lessee. Horses not under lease must race in the name of the bona fide owner. Horses under lease must race in the name of the lessee and a copy of the lease must be recorded with the Kentucky [Harness] Racing Commission. Persons violating this rule may be fined, suspended or expelled.

Section 3. Program Information. (1) A printed program shall be available to the public at all meetings where purses are raced for. All programs shall furnish:

- (a) Horse's name and sex.
- (b) Color and age.
- (c) Sire and dam.
- (d) Owner's name.
- (e) Driver's name and colors.
- (f) Age and weight.

(2) At extended pari-mutuel meetings the following additional information shall be furnished.

(a) In claiming races the price for which the horse is entered to be claimed must be indicated.

(b) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include: date of race, place, size of track if other than a half-mile track, symbol for free-legged pacers, track condition, type of race, distance, the fractional times of the leading horse including race time, post position, position of one quarter (1/4), one half (1/2), three quarters (3/4), stretch with lengths behind leader, finish with lengths behind leader, individual time of the horse, closing dollar odds, name of the driver, names of the horses placed first, second and third by the judges. The standard symbols for breaks and park-outs shall be used, where applicable.

(c) Indicate drivers racing with a provisional license.

(d) Indicate pacers that are racing without hobbles [hopples].

(e) Summary of starts in purse races, earnings, and best win time for current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race.

(f) The name of the trainer.

(g) The consolidated line shall carry date, place, time, driver, finish, track condition and distance, if race is not at one (1) mile.

(h) All horses drawn into an early closer, a late closer, stake or futurity shall be listed on the official program.

Explanation:

Early closer - a race in which entries close at least six (6) weeks preceding the race.

Late closer - a race in which entries close less than six (6) weeks and more than three (3) days before the race is contested.

Futurity - a stake in which the dam of the competing animal is nominated.

Stake - a race which will be contested in a year subsequent to its closing.

Section 4. Failure to Furnish Reliable Program Information. May subject the track and/or program director to a fine not to exceed \$500 and the track and/or the program director may be suspended until arrangements are made to provide reliable program information.

Section 5. Inaccurate Information. Owners, drivers, or others found guilty of providing inaccurate information on a horse's performance, or of attempting to have misleading information given on a program may be fined, suspended or expelled.

Section 6. Check on Identity of Horse. Any track official, member of the Kentucky [Harness] Racing Commission or their agent, or owner, trainer or driver of any horse declared into a race wherein the question arises may call for information concerning the identity and eligibility of any horse on the grounds of a track, and may demand an opportunity to examine such horse with a view to establishing his identity or eligibility. If the owner or party controlling such horse shall refuse to afford such information, or to allow such examination, or fail to give satisfactory identification, the horse and the said owner or party may be barred and suspended or expelled.

Section 7. Frivolous Demand for Identification. Any person demanding the identification of a horse without cause or merely with the intent to embarrass a race, shall be punished by a fine not exceeding \$100 or by suspension or expulsion.

Section 8. Tattoo/Freeze Brand Requirements. No horse will be permitted to start at an extended pari-mutuel meeting that has not been tattooed unless the permission of the presiding judge is obtained and arrangements are made to have the horse tattooed or freeze branded. Any person refusing to allow a horse to be tattooed or freeze branded may be fined, suspended or expelled.

Section 9. False Chart Lines. Any official, clerk, or person who enters a chart line on an eligibility certificate when the race has not been charted by a licensed charter may be fined, suspended or expelled.

Section 10. Withholding Registration or Eligibility Certificate. Any person withholding an eligibility or registration certificate from the owner or lessee of a horse, after proper demand has been made for the return thereof, may be suspended until such time as the certificate is returned.

RICHARD "SMITTY" TAYLOR, Chairman

APPROVED BY AGENCY: October 14, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 1996, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 18, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Bernard Hettel, Executive Director,

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Kentucky Racing Commission, 4063 Iron Works Pike, Building B,
Lexington, Kentucky 40511, (606) 246-2040 - Phone, (606) 246-2039
- Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernard Hettel

(1) Type and number of entities affected: All standardbred horses that race at harness tracks in the state will be affected. In 1996 there were approximately 1,800 horses that raced at these tracks.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are none.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are none.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No increase in costs or paperwork.

2. Second and subsequent years: There are no changes.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no changes that affect the Kentucky Racing Commission.

2. Continuing costs or savings: There are none.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: The paperwork remains the same.

(4) Assessment of anticipated effect on state and local revenues: This change will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There are none.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: There are none.

(b) Kentucky: There are none.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are none.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are none.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be none.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: There is none.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering was not applied. The only change that occurs in this amendment is that standardbred owners who race their horses at a Kentucky track are given the option of either tattooing or freeze branding their horses for identification.

PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

811 KAR 1:035. Claiming races.

RELATES TO: KRS 230.630(1), (3), 230.640

STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate claiming races.

Section 1. Who May Claim. A horse entered in a claiming race may be claimed for its entered price by a licensed horse owner who has a horse programmed to start in a pari-mutuel race at that meeting, or by a licensed horse owner who has received a claim certificate from the commission, or by any person who has qualified for a license as a horse owner and who has received a claim certificate from the commission. An authorized agent may claim for a qualified owner. To qualify for a license as an owner, the applicant must have a current United States Trotting Association membership as an owner or membership as an associate-member. Any person seeking to effect a false claim by inducing another to claim a horse for him will be subject to the penalties provided by Section 9 of this administrative regulation.

Section 2. Prohibitions. (1) No person shall claim his own horse nor shall he claim a horse trained or driven by him.

(2) No person shall claim more than one (1) horse in a race.

(3) No qualified owner or his agent shall claim a horse for another person.

(4) No owner shall cause his horse to be claimed directly or indirectly for his own account.

(5) No person shall offer, or enter into an agreement, to claim or not to claim or attempt to prevent another person from claiming any horse in a claiming race.

(6) No person shall enter a horse against which there is a mortgage, bill of sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the clerk of the course of the track conducting such claiming race.

Section 3. Claiming Procedure. (1) Owner's credit. The owner must have to his credit with the track giving the race an amount equivalent to the specified claiming price plus the existing Kentucky sales tax and requisite fees for transfer of registration. By accepting the claim, the racetrack assumes responsibility for payment to the owner of the horse claimed. The money due for a claimed horse is to be paid to the owner losing said horse within forty-eight (48) hours (Sundays excepted) by the track, provided that said horse has a current test complying with subsection (14) of this section.

(2) Owner's consent. No declaration may be accepted unless written permission of the owner is filed with the race secretary at the time of declaration.

(3) Program. The claiming price shall be printed on the program and all claims shall be for the amount so designated and any horse entered in a claiming race may be claimed for the designated amount.

(4) Claim box. All claims shall be in writing, sealed and deposited at least fifteen (15) minutes before the time originally scheduled for the race to begin in a locked box provided for this purpose by the association.

(5) Opening of claim box. No official shall open said box or give any information on claims filed until after the horses leave the paddock for the post parade. Immediately after the race, the claim box shall be opened and the claim, if any, examined by the judges.

(6) Multiple claims on same horses. Should more than one (1) claim be filed for the same horse, the owner shall be determined by

lot by the judges.

(7) Delivery of claimed horse. A horse claimed shall be delivered immediately by the original owner or his trainer to the successful claimant upon authorization of the presiding judge. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation of this rule. The hobble [hepple] measurements of a claimed horse must be made available to the successful claimant by the paddock judge.

(8) Refusal to deliver claimed horse. Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended together with the horse until delivery is made.

(9) Vesting of title to claimed horse. Every horse claimed shall race in all heats or dashes of the event in the interest and for the account of the owner who declared it in the event, but title to the claimed horse shall be vested in the successful claimant from the time the word "go" is given in the first heat or dash, and said successful claimant shall become the owner of the horse whether it be alive or dead or sound or unsound, or injured during the race or after it; provided, however, that the final vesting of title to a claimed horse is subject to the conditions and provisions of subsection (14) of this section.

(10) Affidavit by claimant. The judges may require any person making a claim for a horse to make affidavit that he is claiming said horse for his own account or as authorized agent and not for any other person. Any person making such affidavit willfully and falsely shall be subject to punishment as hereinafter provided.

(11) Penalty for thirty (30) days. A claimed horse may start in a race in which the claiming price is less than the price at which it was claimed. The day claimed shall not count, but the following calendar day shall be the first day and the horse may be entered whenever necessary so that the horse may start on the 31st calendar day following the claim for any claiming price. If a horse is claimed no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of claiming. Further, such horse shall be required to continue to race at the track where claimed for a period of thirty (30) days or the balance of the current racing meeting whichever comes first.

(12) Return of claimed horse to owner or stable. No horse claimed out of a claiming race shall be eligible to start in any race in the name or interest of the original owner for thirty (30) days, nor shall such horse remain in the same stable, or under the care or management of the first owner or trainer, or anyone connected therewith unless reclaimed out of another claiming race.

(13) Scratched horse. A horse scratched from a claiming race is not eligible to be claimed. The owner or trainer of a horse entered in a subsequent claiming race may request the judge to scratch the horse from that race. For a period of thirty (30) days, a horse entered in a claiming race but not in a subsequent claiming race, and is scratched, shall make the next start in a claiming race for a price not higher than the previous claiming price.

(14) Blood sample where horse is claimed. No blood sample shall be taken of a horse which has been claimed, if said horse has a valid veterinarian certificate within twelve (12) months of said claim, which certificate includes the horse's lip tattoo number and which is negative for Equine Infectious Anemia. In the event that said horse does not have said certificate, then a blood sample shall be taken immediately after the race in the paddock by a licensed veterinarian, and the sample identified as being from a claimed horse shall be forwarded within twenty-four (24) hours to an approved laboratory to be tested for Equine Infectious Anemia. Pending the receipt of a negative test for Equine Infectious Anemia the monies paid for the claimed horse shall be held by the track. In the event of a positive test for Equine Infectious Anemia the ownership of the claimed horse shall revert to the owner from whom the horse was claimed and the claiming monies shall be returned to the person or persons who claimed the horse. The cost of the test is to be borne by said owner and the test may be waived by the claimant at his discretion by so indicating on the

claiming slip.

(15)(a) Any filly or mare which has been bred shall not be declared into a claiming race for at least forty-five (45) days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race.

(b) "Where a filly or mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the claimant provided the mare is subjected to a pregnancy examination between the 18th and 21st day of the date of the claim", and is found to be pregnant as a result of that pregnancy examination. A claimant seeking to void the claim must file a petition to bid said claim with the judges within ten (10) days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned. If the judges determine that the claim is void hereunder, the claimant shall receive fifty (50) dollars from the original owner to cover the cost of the pregnancy examination.

Section 4. Subject to the conditions of Section 3(14) of this administrative regulation, the track shall pay the claiming price to the owner at the time the registration certificate is delivered for presentation to the successful claimant and shall withhold and pay the Kentucky sales tax to the Commonwealth as required by law.

Section 5. Claiming Conditions. Whenever possible claiming races shall be written to separate horses five (5) years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a twenty (20) percent minimum price allowance, provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race. An allowance for age shall be given. Two (2) year olds shall be given a 100 percent allowance, three (3) year olds fifty (50) percent allowance, and four (4) year olds twenty-five (25) percent allowance. Claiming races for two (2) year olds may be conditioned. Claiming races for three (3) year olds may be conditioned. The lowest claiming class written at a specific meeting may be conditioned.

Section 6. Minimum Price. No claiming race shall be offered permitting claims for less than the minimum purse offered at that time during the same racing week.

Section 7. Determination of Claiming Price. Except as provided in Section 3(11) of this administrative regulation, and except as provided in 811 KAR 1:030, Section 21, no horse owner shall be prohibited from determining the price for which his horse shall be entered.

Section 8. The current registration certificate of all horses entered in claiming races must be on file with the racing secretary together with a separate claiming authorization form signed by the registered owner or owners and indicating the minimum amount for which the horse may be entered to be claimed. To facilitate transfer of claimed horses the presiding judge may sign the transfer provided that he then send the registration certificate and claiming authorization to the registrar for transfer.

Section 9. Any person violating any of the provisions of this administrative regulation shall be fined, suspended or expelled.

Section 10. Fraudulent Claim. (1) If the judges determine that the declaration of any horse to a claiming race is fraudulent on the part of the declarer they may void the claim and at the option of the claimant order the horse returned to the person declaring it in.

(2) If the judges determine that any claim of a horse is fraudulent

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on the part of the person making the claim, they may void the claim and may, at the option of the person declaring it in, return the horse to the person declaring it in.

Section 11. (1) Should any stable be eliminated by sale or removal from the grounds, the right to claim is void. However, when a stable has been eliminated by claiming, the owner so affected shall have the right to claim a horse during the next thirty (30) racing days at any recognized meeting in this state even though all or a portion of the next thirty (30) racing days take place in the following calendar year. The owner or trainer of a stable eliminated by claiming shall get a written statement from the deputy commissioner or his assistant stating the date and place that the said stable was eliminated by claiming. Should such stable acquire a horse before availing itself of the privilege, then the privilege shall be void.

(2) Should any stable be eliminated by fire or other hazards, such stable shall have claiming privilege under the conditions indicated for the stable eliminated by claiming, at the discretion of the deputy commissioner or his assistant.

RICHARD "SMITTY" TAYLOR, Chairman

APPROVED BY AGENCY: October 14, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 1996, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 18, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Bernard Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, (606) 246-2040 - Phone, (606) 246-2039 - Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernard Hettel

(1) Type and number of entities affected: This would affect individuals who own pregnant fillies or mares that are entered in claiming races and the individuals who are seeking to claim such horses. The occurrence of a pregnant filly or mare being entered in a claiming race is about one in 100.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are none.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are none.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No increase in paperwork. The only increase in costs would be to the original owner for a pregnancy examination on the filly or mare.

2. Second and subsequent years: There are no changes.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no changes that affect the Kentucky Racing Commission.

2. Continuing costs or savings: There are none.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: The paper work remains the same.

(4) Assessment of anticipated effect on state and local revenues: This change will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Monies paid to cover the pregnancy examination shall be paid by the original owner.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: There are none.

(b) Kentucky: There are none.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are none.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are none.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be none.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering was not applied. The \$50 fee is paid by the original owner to the claimant. No fee is paid the Kentucky Racing Commission.

PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

811 KAR 1:120. Licensing of race meetings.

RELATES TO: KRS 230.231 et seq. [~~230.630(1), (3), 230.640, 230.680, 230.690~~]

STATUTORY AUTHORITY: KRS 230.090, 230.215(2) [~~230.630(3), (4), (7)~~]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate the licensing of race meetings and to establish the standards of liability between race tracks and racing associations and other persons licensed by the Kentucky Racing Commission.

Section 1. Application for License. Application for licenses to conduct harness racing meets shall be made on forms furnished by the commission. Such application shall be verified under oath.

Section 2. Information. The application shall contain the following information for commission approval:

(1) An inventory of all property owned or leased by the applicant in any manner connected with the race track at which the proposed

meeting is to be held.

(2) Financial statement. A financial statement certified by a licensed certified public accountant, consisting of a balance sheet showing applicant's financial condition at the end of the last fiscal year, and a profit and loss statement for said year.

(3) Stockholders. A complete list of all stockholders holding any stock, if the applicant is a corporation, including the amount of the stock so held, the address of each stockholder and the amount and class of stock held by each stockholder; and if any stock is held in trust, the names, addresses, the amount and class of stock held by each beneficial owner thereof under said trust.

(4) The name and circumference of the rack track.

(5) The seating capacity of the clubhouse, grandstand, or other seating facilities.

(6) The parking and transportation facilities available to patrons.

(7) The stabling facilities available.

(8) The number of free drinking water fountains, public wash-rooms and comfort stations available for patrons.

(9) First aid equipment available and number and character of first aid attendants.

(10) The firefighting equipment available.

(11) The track equipment available and minimum number of ground employees for operation of such equipment.

(12) Restaurant facilities available.

(13) The track measurements.

(14) The capacity of the paddock and location of stalls for saliva and other tests.

(15) Complete description of lighting system, if night racing is proposed.

(16) Name, address and experience of manager of pari-mutuel equipment, number of seller windows and cashier windows, minimum number of calculators.

(17) Name, address and experience of general manager.

(18) Name, address and experience of racing secretary.

(19) Minimum and maximum number of races per day, type of races, number of monies to be paid and percentage of payment in each race, entrance fee for overnight races. Type of photo finish and timing device used. Name of track superintendent. Total purse for meeting. Minimum purse per heat or race. Type of starting.

(20) The publicity and advertising intended, and the name and address of manager of the advertising department.

(21) The applicant's public liability insurance coverage and list of names and addresses of companies carrying the same.

(22) The schedule of admission charges.

Section 3. Time for Filing Applications. (1) All applications for licenses to conduct race meetings for each calendar year shall be filed with the commission not later than sixty (60) days prior to the commencement of said race meeting. However, under unusual conditions at the discretion of the commission, the commission may receive applications for licenses and act thereon at a date subsequent to the time heretofore determined by the provisions of this section to receive applications. In such event, if the license is granted, an applicant may at the commission's discretion be fined no more than \$100 per day for each day that said application is late.

(2) In the event said applicant after receipt of notice of approval of its application shall fail to comply with the above requirements within the period above fixed, the application for license of such applicant shall be considered withdrawn and of no effect.

Section 4. Application for Racing Dates. Each licensee shall file an application for racing dates no later than the first day of November of the year immediately preceding said requested dates. The commission shall assign said dates within forty-five (45) days after the first day of November, unless it is impracticable to do so. The commission may increase or reduce the number of days applied for, or may assign different dates than those requested by the licensee.

Section 5. To conduct a racing meeting under a license issued by the Kentucky [Harness] Racing Commission, the licensee shall at all times maintain a finished race track which meets the following requirements of the commission: Shall file with the commission a certificate of a duly licensed civil engineer or land surveyor that he has measured the said track from wire to wire, three (3) feet out from the pole or inside hub rail thereof and certifying in linear feet the result of such measurement.

Section 6. Wagering on Races Conducted Off of Premises. A licensee giving a race meeting under a license issued by the Kentucky [Harness] Racing Commission may permit bets to be made on the grounds of said licensee, with the approval of the commission, on any race held outside of the grounds, and no foreign book or gambling device of any kind shall be permitted on said grounds.

Section 7. Bookmaking. Anyone guilty of making a handbook on the grounds of any licensee of the commission, shall be ejected from the grounds, and denied further admission thereto, and any owner, driver, or other person interested in any horse or horses at said meeting, who shall be guilty of betting with or through any such handbook, shall be ejected from the grounds or denied admission by the order of the judges, and/or licensee.

Section 8. Solicitation of Wagers. If any trainer, driver, stable employee or other person solicits bets from the public by correspondence, or other methods, to be made on the horses in any stable, such person or persons so offending shall be ruled off the course or denied admission by order of the judges, and/or licensee.

Section 9. Reciprocal Suspensions. No licensee shall permit any person who is under suspension by, or has been ruled off the member course by the United States Trotting Association, or by any state racing commission, to participate in any manner in a harness racing meet licensed by the commission, or in the conduct of such meet.

Section 10. Conditions of License. Imposed on each licensee of the Kentucky [Harness] Racing Commission is the duty of enforcing the rules and administrative regulations imposed by the commission, the said rules and administrative regulations being a condition under which the licenses are granted; the commission reserving the right to amend, alter or repeal any rule, administrative regulation or condition herein imposed or to supplement said rules and administrative regulations.

Section 11. Cash Balance, Surety Bond and Reports. (1) Financial statements and pari-mutuel manager. Every association licensed by the commission shall submit to the Kentucky Racing Commission [secretary of the commission (executive racing secretary)] at least thirty (30) days before the beginning of each race meeting either a surety bond, approved by the commission, in the amount of \$50,000 or place in escrow in a Kentucky bank in favor of the commission in the amount of \$50,000 or a combination of a surety bond and cash escrow in the amount of \$50,000 subject to the commission's approval. Said bond and/or escrow shall obligate the association licensed by the commission to fulfill all the dates granted to them; confine the races or racing to the specific dates approved by the commission; comply with and perform the provisions and the undertaking set forth in the application made to the commission as finally approved; comply with the provisions of the bylaws and rules and administrative regulations of the commission relating to the conduct of its said meeting and the races or racing on its tracks; discharge all of its obligations set forth in the granting of membership, assignment of dates and those imposed by the bylaws, rules and administrative regulations as aforesaid relating to payment of membership dues, fines, claims and fees of the commission and the

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payment of any sums due or to become due to the horsemen entered and/or competing at said meeting primarily, and thereafter suppliers and shall submit, without reservation, to the jurisdiction of the Kentucky State and Federal Courts in the district within which is located the principal office of the commission to the end that any action at law or in equity to enforce any rights and/or obligations based on, or arising from or growing out of this bond shall be confined to the jurisdiction of said courts, and shall appoint and designate their agent to accept service of any notice or legal process attending the enforcement of any such rights or obligations, the Secretary of State, of the State of Kentucky.

(2) Bond and/or escrow shall remain in full force and effect at least sixty (60) days and until the commission notifies the principal and surety or the escrow agent that the association licensed by the commission has duly complied with all of the requirements set out in said bond or escrow agreement.

(3) A specimen of the bond required by the commission is as follows:

KNOW ALL MEN BY THESE PRESENTS:

That _____
principal and _____
surety, are well and firmly bound unto the Kentucky [Harness] Racing Commission in the sum of \$50,000 to be paid to the said Kentucky [Harness] Racing Commission, its successors or assigns; to which payment well and truly to be made and done, we and each of us, principal and surety, jointly and severally, do bind ourselves, our successors and assigns, and every one of them, firmly and by these presents. Sealed with our seals and dated the _____ of _____, 19____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the above burden _____, its successors or assigns, or any of them, shall and do well and truly fulfill all of the racing dates in the year _____ granted them by membership in the Kentucky [Harness] Racing Commission, barring an act of God or catastrophe beyond control; confine the races or racing to the specific dates approved by the Kentucky [Harness] Racing Commission; comply with and perform the provisions and the undertaking set forth in the application made to the Kentucky [Harness] Racing Commission, as finally approved; comply with the provisions of the Bylaws and Rules and Regulations of the Kentucky [Harness] Racing Commission relating to the conduct of its said meeting and the races or racing on its tracks; discharge all of its obligations set forth in the granting of membership, assignment of dates, and those imposed by the Bylaws, Rules and Regulations as aforesaid relating to payment of membership dues, fines, claims and fees of the said Kentucky [Harness] Racing Commission and the payment of any sums due or to become due to the horsemen entered and/or competing at said meeting primarily and thereafter suppliers, then this obligation is to be void, otherwise to remain in full and effect.

And further, we and each of use, principal and surety, do hereby submit, without reservation, to the jurisdiction of the Kentucky State and Federal Courts in the district within which is located the principal office of the Kentucky [Harness] Racing Commission to the end that any action at law or in equity to enforce any rights, and/or obligations based on, or arising from, or growing out of this Bond shall be confined to the jurisdiction of said courts. And we, principal and surety, do hereby appoint and designate as agent for us, and each of us, to accept service of any notice of legal process attending the enforcement of any such rights or obligations, the Secretary of State, of the State of Kentucky.

Witness our hand and seal this _____ day of _____, 19____.

Principal: _____
By: _____
Surety: _____
By: _____

(4) Each association licensed by the commission shall submit to the commission at the beginning of each week, during its meeting, a sworn statement attesting that all operating expenses already incurred have been paid or provided for.

Section 12. Commission Office. Each licensee shall provide suitable facilities for the commission in the conduct of its business. Failure to do so within ten (10) days after written notification by the commission setting out the deficiencies of said facilities, shall subject said licensee of a fine up to \$250 per day for each day that suitable facilities are not thereafter provided.

Section 13. Policing of Premises. The licensee shall provide a sufficient number of guards and watchmen to maintain order on all parts of the racing enclosure, and no tipster shall be allowed on any part of the licensed premises, and no groom or stable attendant, shall loiter in the betting ring or any place else with the evident intention of engaging in tipping for any remuneration or for nothing, and anyone so found shall be immediately escorted to the general manager of the licensee and his license shall be taken up, and the licensee shall thereafter exclude said person from the licensed premises.

Section 14. Supervision of Peddlers. The licensee shall supervise the practice and methods of so-called merchandise peddlers who may have entry to the track enclosure. Such supervision shall be extended to any other stables where horses are lodged which may be eligible to race at said meeting. However, the licensee shall not by virtue of this rule or otherwise restrict the open purchasing or attempt to control or monopolize said business or proper selling of merchandise to owners, trainers, or stable employees.

Section 15. Drinking Fountains and Rest Rooms. The licensee shall furnish an adequate number of free drinking water fountains, comfort stations, and washrooms throughout its grounds and buildings for the use of the public.

Section 16. Stabling of Horses. Any horse racing at a licensed meeting must be stabled within the confines of that track; provided, however, in case of necessity such a horse may be stabled within the confines of an adjacent Kentucky race track, or in another location approved by the commission. The licensee holding the race meeting shall provide for temporary stabling of horses, eligible to race, which are brought to the races from approved outside stable space.

Section 17. Watchmen in Stable Area. Each licensee shall maintain and furnish complete and adequate watchman service night and day in and about all stable enclosures.

Section 18. Duties of Watchmen. (1) Watchmen so employed shall be individually responsible for the certain part of the stable enclosure where they are on duty and shall immediately investigate and report the presence of anyone during the night or day who may be within said stable enclosure without possessing proper credentials.

(2) A letter of instructions to all watchmen shall be addressed to each of them by the licensee, covering fully their duties and their strict obligation to keep stable enclosures free from outsiders and hangers on, and a copy thereof furnished to the commission.

Section 19. Stable Enclosures Fenced. All such stable enclosures must be properly fenced and admission granted only on proper license or credentials actually shown to the gatemen. This rule may be waived with commission approval.

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Section 20. Betting by Commission Employees. Betting by ~~commission employees and~~ racing officials is prohibited.

Section 21. Betting by Paddock Employees. Any track employee working in the paddock area is not allowed to bet or pass information to outsiders for betting purposes.

Section 22. Accepted Conditions of Race Meetings. (1) Bind upon licensees. The commission, recognizing the necessity of an association to comply with the requirements of its license and to fulfill its obligation to the public and the Commonwealth of Kentucky with the best possible uninterrupted services, in the comparatively short licensed period, herein provides that all associations, officials, horsemen, owners, veterinarians, trainers, drivers, grooms, farriers, registered employees, and all licensees, who have accepted directly or indirectly, with reasonable advance notice, the conditions under which said association engages and plans to conduct such race meeting, shall be bound thereby.

(2) Notice to commission of intent to terminate. Any association, officials, horsemen, owners, trainers, drivers, grooms, veterinarians, farriers, register employees, and all licensees who so accept such conditions shall, before they terminate or discontinue their employment, engagements or activities, give the commission and the association with whom they are engaged, at least fifteen (15) days notice in writing of their intentions to terminate or discontinue their employment, engagements or activities under such conditions. The commission may upon notice to all parties of interest conduct a hearing or hearings with respect to any termination or discontinuance of employment.

Section 23. Horse Ambulance. There shall be a horse ambulance at all tracks under the jurisdiction of the commission for the removal of crippled or dead animals from the track. Horse ambulances must be equipped with a screen for use when an animal must be destroyed in view of the general public and also a winch to lift dead or injured animals onto the ambulance.

Section 24. Ambulance. At all extended para-mutuel meetings the licensee shall provide an ambulance equipped consistent with that required by the state of Kentucky to transport a sick, injured or for any other reason, person or persons to a hospital or medical facility. Said ambulance shall be maintained by two (2) or more persons certified by the state to transport individuals to a hospital or medical facility over a public thoroughfare. The ambulance shall be stationed at an entrance to the racing surface allowing for visual contact with the race in progress and shall make a prompt response in the event that one (1) or more drivers or horses are involved in an accident or there is any other need for emergency transportation. This ambulance shall be stationed no less than one (1) hour before post time of the first race and until the last race is completed. If the ambulance must leave its station for any reason, there shall be a replacement before the next event is contested. Such ambulance shall be stationed at all programmed races, time trials and qualifying races under the rules and administrative regulations of the Kentucky Racing Commission.

Section 25. Exculpatory Clauses. Effective January 1, 1997, agreements (including but not limited to stall applications, entry forms, and condition books) between persons or entities licensed by the Kentucky Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licenses associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

(1) Ordinary negligence which causes or contributes to loss, injury

or damage to horses while on the premises of a licensed association; and

(2) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields ("gallops") owned or controlled by the licensed association. Subject to the above exceptions, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. No licensee shall attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

Section 25. Constructive Notice to and Consent of Licensees. All persons licensed by the Kentucky Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions which exceed the limitations set forth in this regulation shall be void and unenforceable in their entirety.

Section 26. Model Provision. The following provision shall be deemed to comply with the limitations set forth in this regulation: All Kentucky Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, drivers, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in such activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other Licensees so participating for:

(1) Ordinary negligence which causes or contributes to loss, loss of use, injury or damage to horses while on the premises of (name of association); and

(2) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields ("gallops") owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee and its agents or employees, the condition of the premises or (name of licensed association) or any other cause. Except as provided above, all licensees participating in racing, training and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

RICHARD "SMITTY" TAYLOR, Chairman

APPROVED BY AGENCY: October 14, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 1996, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 18, 1996, 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

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regulation to the contact person.

CONTACT PERSON: Mr. Bernard Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, (606) 246-2040 - Phone, (606) 246-2039 - Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Bernard Hettel

(1) Type and number of entities affected: There are approximately 850 licensed owner/trainer/driver and (2) two racing associations. This amendment has the potential to affect all of them.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are none.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. At most, this proposal will not increase costs of doing business, but more fairly distribute them between tracks and horsemen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no changes from the existing procedure.

2. Second and subsequent years: There are no changes.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no changes that affect the Racing Commission.

2. Continuing costs or savings: There are none.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: The paperwork requirements remain the same.

(4) Assessment of anticipated effect on state and local revenues: This change will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing budget already covers costs of administration.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The regulation affects the entire state the same and more equitably distributes insurance costs.

(b) Kentucky: The comments were the same without regards to geographic area.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The commission, the tracks, and the horsemen discussed alternatives for over one year. This proposed amendment represents a consensus of all parties.

(8) Assessment of expected benefits: There are none.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are none.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be none.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government 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:

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering was not applied. It was not applied to the regulation to make all tracks subject to the same requirements.

CABINET FOR HEALTH SERVICES Office of Inspector General (Amendment)

900 KAR 2:060. Hearings concerning transfer and discharge rights.

RELATES TO: KRS 194.030(12)(b)

STATUTORY AUTHORITY: KRS Chapter 13B, 216.515, 216.525, 216.557, 216.560, 216.567, 42 CFR 431.200 to 431.246, 483.12, 483.204(b), EO 96-862

NECESSITY AND FUNCTION: 42 CFR 483.12 requires that the state shall have in place a fair and impartial decision-making process for appeals related to involuntary transfer and discharge. This administrative regulation sets forth guidelines for this process for long-term care facilities as licensed by 902 KAR 20:300 or those long-term care facilities certified in accordance with 42 CFR 483. This administrative regulation sets forth the hearing process for appeals related to residents' transfer and discharge rights under Kentucky's Nursing Home Reform statutes and administrative regulations. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Health Services.

(2) "Facility" means a long-term care facility as defined by KRS 216.510(1) excluding those facilities licensed as family care homes.

(3) [(2)] "Hearing officer" is defined in KRS 13B.010(7). [means the person designated by the cabinet to conduct a hearing and make a decision regarding any appealed transfer or discharge.]

(4) [(3)] "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.

Section 2. Hearing Procedure. (1) In accordance with 900 KAR 2:050, Section 3(5), a resident has fifteen (15) days from receipt of the facility's notice of intent to transfer or discharge the resident to notify the cabinet in writing of his intent to appeal.

(2) Upon receipt of the notice of appeal [in accordance with 900 KAR 2:050 or 900 KAR 2:020, Section 2(1) and (2)], the secretary of the cabinet shall designate [appoint] a hearing officer and a hearing shall occur as soon as practicable. [within thirty (30) days.]

(3) [(2)] Notice of hearing shall be served on [mailed to] the facility and resident not less than twenty (20) [ten (10)] days prior to the commencement of the hearing. The notice of hearing shall contain the reasons, time, and place of the hearing, and shall comply with KRS 13B.050(3). The notice of hearing shall be served [mailed] by certified mail, return receipt requested, or by personal service, to the facility and the resident.

(4) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. A written prehearing order shall be part of the record.

(5) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090. The resident may be represented in accordance with 42 CFR 431.206(b)(3).

[(3)] The facility and the resident may be represented by counsel and make oral or written argument, offer testimony, cross-examine

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witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.]

(6) [(4)] All testimony at the hearing shall be mechanically recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript. Requests for a court reporter for transcription shall be forwarded to the hearing officer at least ten (10) days prior to the hearing date.

[(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

[(6)(a) The hearing officer shall review the:

1. Cabinet's determination that the resident's rights were violated; and

2. Fine imposed by the cabinet.

[(b) The hearing officer shall base his review of the cabinet's determination and fines on the:

1. Facts of the case; and

2. Requirements of KRS 216.555, 216.557, 216.560, and this administrative regulation.

[(c) Appropriate to the facts of the case, KRS Chapter 216, and this administrative regulation, the hearing officer may:

1. Sustain the cabinet's determination and fine; or

2. Determine that the rights of the resident were not violated, and that the imposition of a fine was not warranted; or

3. Make a different determination with regard to the severity or type of violation, and the fine required by KRS Chapter 216; or

4. Make any other decision warranted by the facts, KRS Chapter 216, and this administrative regulation.]

(7) The hearing shall be held in the city where the long-term care facility is located. It may be held at the long-term care facility when:

(a) A neutral hearing site is unavailable and appropriate space is available in the long-term care facility; or

(b) The resident is unable to travel, as verified by a physician's statement to that effect. [The hearing shall be the only hearing as it relates to cabinet findings regarding fines, citations and cited deficiencies concerning transfer and discharge rights under this or any licensure regulations.]

(8) The hearing officer shall submit a written recommended order to the secretary of the cabinet for a final order in accordance with KRS 13B.110 and 13B.120. [The hearing officer's decision shall be the final determination of the cabinet. The cabinet shall forward the decision to the resident and facility within ten (10) days of the receipt of the hearing officer's decision.]

(9) In addition to the grounds for disqualification set forth in KRS 13B.040(2)(b), no hearing officer shall participate in any hearing involving a facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, fiduciary, contractual creditor or consultative relationship or any familial relation to the resident.

(10) A judicial review may be accorded the resident or facility as specified in [the] KRS 13B.140 [216.570].

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: September 30, 1996

FILED WITH LRC: October 9, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 21, 1996, at 9 a.m., in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will

be cancelled unless interested persons notify the following office in writing by November 14, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4th West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau/David Crane

(1) Type and number of entities affected: Approximately 500 long-term care facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Minimal

2. Second and subsequent years: Minimal

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: \$500 for printing regulation. Legal costs associated with hearings of appeals.

2. Continuing cost or savings: Legal costs associated with hearings of appeals.

3. Additional factors increasing or decreasing costs: Legal costs associated with hearings of appeals.

(b) Reporting and paperwork requirements: Legal paperwork involved in the hearing process.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is mandated by 42 CFR 483.12.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: KRS Chapter 13B amendments to this administrative regulation should have only a minor impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: 42 CFR 431.200 to 431.246.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR Part 483.

2. State compliance standards. 900 KAR 2:050 - Transfer and discharge rights; 902 KAR 20:300 - Operation and services; nursing facilities.

3. Minimum or uniform standards contained in the federal mandate. Federal standards require that the state have in place an appeals procedure for those individuals who feel that their transfer and discharge rights have been violated. 42 CFR 483.204(b) requires that the Medicaid fair hearing process set forth at 42 CFR 431.200 to 431.246 be used. 900 KAR 2:050 sets forth those rights as described in the federal certification standards for nursing facilities. Specific provisions for the conduct of administrative hearings into these matters are provided for in this regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate? Yes. While this regulation mirrors the federal standards, additional providers beyond the federal mandate are included under the authority of the Kentucky nursing home reform statutes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. All long-term care facilities must meet state requirements as they relate to Kentucky nursing home reform. This law provides for transfer and discharge rights and this regulation sets forth the standards for all long-term care facilities except for those licensed as family care homes.

CABINET FOR HEALTH SERVICES
Office of Inspector General
(Amendment)

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 214.175, 216B.010 to 216B.130, ~~[216B.107, 216B.990(1), (2)]~~, Chapter 310, 311.241 to 311.247, 311.990

STATUTORY AUTHORITY: KRS 216B.042, 1996 Ky. Acts ch. 342, 376, EO 96-862 ~~[216B.106]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 mandate that the Kentucky Cabinet for Health Services ~~(Human Resources)~~ regulate health facilities and health services. This administrative regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an accredited Record Technician by the American Medical Record Association. ["Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.]

(2) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of radiation producing machines. ["Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians

who are in the first year of hospital training.]

(3) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested. ["Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.]

(4) "Induration" means a firm area in the skin which develops as a reaction to the intradermal injection of five (5) tuberculin units of purified protein derivative by the Mantoux technique when a person has tuberculosis infection. ["Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.]

(5) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training. ["Registered, certified or registry-eligible dietitian" means a person who is certified in accordance with KRS Chapter 310.]

(6) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs or tissues for transplantation. ["Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.]

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services. ["Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.]

(9) "Registered, certified or registry-eligible dietitian" means a person who is certified in accordance with KRS Chapter 310. ["Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.]

(10) "Registered records administrator" means a person who is certified as a registered records administrator by the American Medical Record Association. ["Induration" means a firm area in the skin which develops as a reaction to injected tuberculin proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.]

(11) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(12) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(13) ~~(12)~~ "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

~~(13) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs/tissues for transplantation.]~~

Section 2. Scope of Operation and Services. Hospitals are establishments with organized medical staffs and permanent facilities

with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and administrative regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at the meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. These reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department

in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person~~(s)~~ or agency responsible for the postdischarge care of the patient. All pertinent information concerning postdischarge needs shall be provided to the responsible person~~(s)~~ or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within thirty (30) days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members and

allied health professionals, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department or [A] service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record.

a. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment.

b. Skin testing shall not be required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis.

c. Two (2) step skin testing shall be required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment.

d. All staff who have never had a skin test of ten (10) or more millimeters induration shall be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, shall receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with *Mycobacterium tuberculosis*. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number;

2. Health records;

3. Evidence of current registration, certification, or licensure of personnel;

4. Records of training and experience;

5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to:

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases.

2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with

harborage and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes.

1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

2. Needles shall not be purposely bent or broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines.

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste which includes viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes shall either be incinerated, autoclaved or be rendered nonhazardous by technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet; and

b. Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

4. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment administrative regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical and other patient records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered

records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission, name of attending medical staff member, and allied health professional in accordance with subsection (8)(b)2 of this section;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member or advanced registered nurse practitioner as authorized in 1996 Ky. Acts ch. 342, or therapeutically-certified optometrists as authorized in 1996 Ky. Acts ch. 376; [and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;]

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthesiologist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan which addresses the comprehensive care

needs of the patient, to include the coordination of the facility's service departments that have impact on patient care;

11. Physician's, or dentist's when applicable, progress notes and nurses' observations;

12. Record of temperature, blood pressure, pulse and respiration;

13. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

14. Discharge summary, including condition of patient on discharge, and date of discharge;

15. In case of death, autopsy findings, if performed; and

16. In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ or [A] tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

5. Procedures for the hospital administrator or his designee to report any information about the possible sale, purchase, or brokering of a transplantable organ to the Cabinet for Health Services [~~Human Resources~~], Office of the Inspector General, as required by KRS 311.241(3).

(d) A patient with impending or declared brain death or cardiopulmonary death as determined pursuant to KRS 446.400 should not be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his patient. Other qualified personnel may complete medical histories, perform physical examinations, record findings, and compile discharge summaries, in accordance with their scope of practice and the hospital's protocols and bylaws.

(c) A complete history and physical examination shall be conducted and recorded within twenty-four (24) hours after admission of the patient.

(d) The attending medical staff member shall state his final diagnosis, assure that the discharge summary is completed and sign the records within thirty (30) days following the patient's discharge.

(e) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(f) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing process, and nursing care procedures.

1. The nurse shall evaluate the patient by utilizing the nursing process in accordance with KRS 314.011.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. Medications or treatments shall not be given without a written order signed by a physician or dentist, when applicable, or advanced registered nurse practitioner as authorized in 1996 Ky. Acts ch. 342, or therapeutically-certified optometrists as authorized in 1996 Ky. Acts ch. 376. Telephone orders for medications shall be given only to a licensed practical or registered nurse or a pharmacist and signed by the physician, dentist, advanced registered nurse practitioner or therapeutically-certified optometrist [~~medical staff member~~] within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

6. Patient restraints or protective devices, other than bed rails, shall not be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) registered, certified or registry-eligible dietician either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laborato-

ry examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Laboratory services shall be under the direction of a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

7. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the proficiency testing and quality control provisions in accordance with certification requirements under [ef] 42 USC Part 263a.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and administrative regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the

pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the ~~[physician's, or dentist's when applicable,]~~ original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications or [f] prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws, and the order shall contain a concise statement of the reason for the service or [f] examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients

and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration or [A] rehabilitation service. If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(a) Hospitals in which physical restoration or [A] rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Therapy services shall be provided only upon written orders of qualified personnel in accordance with their scope of practice and according to the hospital's protocols and bylaws.

(f) Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department or [A] service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

- a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person{(s)} transporting patient, and time of arrival;
- b. History of present complaint and physical findings;
- c. Laboratory and x-ray reports, where applicable;
- d. Diagnosis;
- e. Treatment ordered and details of treatment provided;
- f. Patient disposition;
- g. Record of all referrals;
- h. Instructions to the patient or family for those not admitted to the hospital; and
- i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room{(s)} and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the

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surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a preanesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The postanesthetic follow-up note shall be written upon discharge from the postanesthesia recovery area or within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in

place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(i) The hospital shall comply with the provisions of KRS 214.175 in participating in surveys relating to the determination of alcohol or other substance abuse among pregnant women and newborn infants.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure administrative regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: September 30, 1996

FILED WITH LRC: October 9, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1996, at 9 a.m., in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by November 14, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., General Counsel, Cabinet for Health

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Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 107 licensed acute care hospitals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

CABINET FOR HEALTH SERVICES Office of Inspector General (Amendment)

902 KAR 20:180. Psychiatric hospitals; operation and services.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990~~(1)~~, ~~(2)~~

STATUTORY AUTHORITY: KRS 216B.042, 1996 Ky. Acts ch. 342, 376, EO 96-862 ~~(216B-405)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 ~~(and 216B-405)~~ mandate that the Kentucky Cabinet for Health Services ~~(Human Resources)~~ regulate health facilities and health services. This administrative regulation provides minimum licensure requirements for the operation and services of psychiatric hospitals and for the provision of psychiatric services in general hospitals which have a psychiatric unit. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Professional staff" means psychiatrists and other physicians, psychologists, psychiatric nurses and other nurses, social workers and other professionals with special education or experience in the care of the mentally ill who are involved in the diagnosis and treatment of patients with mental illness.

(3) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(4) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a mentally ill patient with the sole or primary purpose of controlling or limiting the physical activities of the patient.

(5) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.

Section 2. Scope of Operation and Services. Psychiatric hospitals are establishments with organized professional staffs and permanent facilities with inpatient beds, which provide general medical and psychiatric services, continuous nursing services, psychological services, therapeutic activities, social services, and related support services for the diagnosis and treatment of patients who have a variety of mental illnesses.

Section 3. Applicability. (1) General acute care hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and shall meet the requirements of 902 KAR 20:016 and the additional requirements contained in this administrative regulation. A facility requesting licensure as a psychiatric hospital exclusively shall meet the requirements of this administrative regulation.

(2) A facility shall not be licensed as or be called a psychiatric hospital unless it provides the full range of services required by this administrative regulation and provides for the treatment of a variety of mental illnesses. Facilities which receive certificate of need approval and are licensed after the effective date of this administrative regulation which have, according to the last Annual Hospital Utilization Report, an average daily census of patients whose primary illness is alcoholism or other chemical dependency exceeding ten (10) percent of the licensed bed capacity shall apply for a certificate of need to convert an appropriate number of beds to be licensed under 902 KAR 20:160, Chemical dependency treatment services.

Section 4. Administration and Operation. (1) General requirements.

(a) The hospital shall comply with the requirements of 902 KAR 20:016, Section 3 and the additional requirements contained in this section.

(b) The hospital shall comply with the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of mentally ill and mentally retarded.

(2) Professional staff. A facility requesting licensure as a psychiatric hospital exclusively which operates with an organized professional staff shall comply with the following requirements rather than those in 902 KAR 20:016, Section 3(8):

(a) The hospital shall have a professional staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of clinical care provided to patients and for the ethical conduct and professional practice of its members.

(b) The professional staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. ~~[Require that a licensed physician be responsible for admission, diagnosis, all medical care and treatment, and discharge;~~

2. State the necessary qualifications for professional staff membership;

3. ~~[3.]~~ Define and describe the responsibilities and duties of each category of professional staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members and allied health professionals, and establish a procedure for granting and withdrawing staff privileges, to include credentials review;

4. ~~[4.]~~ Provide a mechanism for appeal of decisions regarding staff membership and privileges;

5. ~~[5.]~~ Provide a method for the selection of officers of the professional staff;

6. ~~[6.]~~ Establish requirements regarding the frequency of, and attendance at, general staff and department or ~~[A]~~ service meetings of the professional staff; and

7. ~~[7.]~~ Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, pharmacy and therapeutic committee, utilization review committee and quality assurance committee.

(c) The hospital shall develop a process of appointment to the professional staff which will assure that the person requesting staff membership is appropriately licensed, certified, registered, or experienced, and qualified for the privileges and responsibilities sought.

(3) Policies.

(a) The hospital's written admission and discharge policies shall be consistent with the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(b) The hospital shall have written policies pertaining to patient rights and the use of restraints and seclusion consistent with KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(c) The hospital shall also have written policies concerning the use of special treatment procedures that may have abuse potential, or be life-threatening, and specifying the qualifications required for professional staff using special treatment procedures.

(4) Patient rights. The hospital shall assure that patient rights are provided for pursuant to the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(5) Medical records.

(a) Patient information shall be released only on written consent of the patient or the patient's authorized representative, or as otherwise authorized by law. The written consent shall contain the following information:

1. The name of the person, agency or organization to which the information is to be disclosed;

2. The specific information to be disclosed;

3. The purpose of disclosure; and

4. The date the consent was signed and the signature of the individual witnessing the consent.

(b) In addition to the requirements of 902 KAR 20:016, Section 3(11)(d) the medical record shall contain:

1. Appropriate court orders ~~and~~ for consent of patient, appropriate family members or guardians for admission, evaluation, and treatment;

2. A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

3. Results of the psychiatric evaluation;

4. A complete social history;

5. An individualized comprehensive treatment plan;

6. Progress notes, dated and signed by physician, nurse, social worker, psychologist, or other appropriate individuals involved in treatment of patient. Progress notes shall document all services and treatments provided and the patient's progress in response to such services and treatments;

7. A record of the patient's weight;

8. Special clinical justification for the use of special treatment procedures specified in Section 5(3) of this administrative regulation;

9. A discharge summary which includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or after care as well as a brief summary of the patient's condition on discharge;

10. If a patient dies, a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician; and

11. When an autopsy is performed, a provisional anatomic diagnosis shall be included in the patient's record within seventy-two (72) hours, with the complete summary and pathology report, including cause of death, recorded within three (3) months.

Section 5. Patient Management. (1) Assessment. The hospital shall be responsible for conducting a complete assessment of each patient.

(a) A provisional or admitting diagnosis, which includes the diagnosis of physical diseases, if applicable, as well as the psychiatric diagnosis, shall be made on each patient at the time of admission.

(b) A physical examination of each patient shall be completed and appropriate laboratory tests shall be initiated within twenty-four (24) hours after admission. ~~[A physician shall be responsible for assessing each patient's physical health.]~~

(c) A psychiatric evaluation for each patient shall be completed within seventy-two (72) hours of admission. It shall include a medical history; a record of mental status; details regarding onset of illness and circumstances leading to admission; a description of attitudes and behavior; an estimate of intellectual functioning, memory functioning, and orientation; and an inventory of the patient's assets in a descriptive, not interpretative, fashion.

(d) A social assessment of each patient shall be recorded.

(e) An activities assessment of each patient shall be prepared and shall include information relating to the patient's current skills, talents, aptitudes, and interest.

(f) When appropriate, nutritional, vocational, and legal assessments shall be conducted. The legal assessment shall be used to determine the extent to which the patient's legal status will influence progress in treatment.

(2) Treatment plans. Each patient shall have a written individualized treatment plan that is based on assessments of his~~her~~ clinical

needs and approved by the patient's attending physician. Overall development and implementation of the treatment plan shall be assigned to appropriate members of the professional staff.

(a) Within seventy-two (72) hours following admission, a designated member of the professional staff shall develop an initial treatment plan that is based on at least an assessment of the patient's presenting problems, physical health, emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team within ten (10) days for any patient remaining in treatment beyond the initial evaluation. It shall be based on a comprehensive assessment of the patient's needs and include a substantiated diagnosis and the short-term and long-range treatment needs and address the specific treatment modalities required to meet the patient's needs.

1. The treatment plan shall include referrals for services not provided directly by the facility.

2. The treatment plan shall contain specific and measurable goals for the patient to achieve.

3. The treatment plan shall describe the services, activities, and programs to be provided to the patient, and shall specify staff members assigned to work with the patient and also the time and [A] frequency for each treatment procedure.

4. The treatment plan shall specify criteria to be met for termination of treatment.

5. The patient shall participate to the maximum extent feasible in the development of his[her] treatment plan, and such participation shall be documented in the patient's record.

6. A specific plan for involving the patient's family or significant others shall be included in the treatment plan when indicated.

7. The treatment plan shall be reviewed and updated through multidisciplinary case conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter for the first year of treatment.

8. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(3) Special treatment procedures.

(a) Special documentation shall be included in the patient's medical record concerning the use of restraints, seclusion and other special treatment procedures which may have abuse potential or be life threatening.

(b) The documentation shall include a physician's written order, justification for the use of the procedure, the required consent forms, a description of any procedures employed to protect the patient's safety and rights, and a description of the procedure used.

(c) The use of physical restraints and seclusion shall be governed by the following:

1. Restraint or seclusion shall be used only to prevent a patient from injuring himself or others, or to prevent serious disruption of the therapeutic program;

2. A written, time-limited order from a physician shall be required for the use of restraint or seclusion;

3. The head of the medical staff shall give written approval when restraint or seclusion is utilized for longer than twenty-four (24) hours;

4. PRN orders shall not be used to authorize the use of restraint or seclusion;

5. The head of the medical staff or his designee shall review daily all uses of restraint or seclusion and investigate unusual or possibly unwarranted patterns of utilization;

6. Restraint or seclusion shall not be used in a manner that causes undue physical discomfort, harm, or pain to the patient; ~~and~~

7. Appropriate attention shall be paid every fifteen (15) minutes to a patient in restraint or seclusion, especially in regard to regular meals, bathing, and use of the toilet; and staff shall document in the patient's record that such attention was given to the patient; and

8. In no case shall a locking restraint be used.

Section 6. Provision of Services. (1) Psychiatric and general medical services.

(a) Psychiatric services shall be under the supervision of a clinical director, service chief, or equivalent, who is qualified to provide the leadership required for an intensive treatment program.

1. The clinical director, or equivalent, shall be certified by the American Board of Psychiatry and Neurology, or meet the training and experience requirements for examination by the board.

2. If the psychiatrist in charge of the clinical program is not board certified, there shall be evidence that consultation is given to the clinical program on a continuing basis by a psychiatrist certified by the American Board of Psychiatry and Neurology.

(b) General medical services provided in the hospital shall be under the direction of a physician member of the professional staff in accordance with staff privileges granted by the governing authority.

1. The attending physician shall assume full responsibility for diagnosis and care of his patient. Physician assistants and advanced registered nurse practitioners may complete medical histories, perform physical examinations, record findings, and compile discharge summaries, in accordance with their scope of practice and the hospital's protocols and bylaws. [A physician member of the professional staff shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.]

2. A complete history and physical examination shall be conducted and recorded within twenty-four (24) hours after admission of the patient.

3. All incidental medical services necessary for the care and support of patients shall be provided by in-house staff or through agreement with outside resources. When the patient's condition requires services not available in the hospital, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

4. ~~[3.]~~ There shall be a written plan delineating the manner in which emergency services are provided by the hospital or through clearly defined arrangements with another facility. The plan shall clearly specify the following:

a. The arrangements the hospital has made to assure that the patient being transferred for emergency services to a nonpsychiatric facility will continue to receive further evaluation ~~and~~ for treatment of his[her] psychiatric problem, as needed;

b. The policy for referring patients needing continued psychiatric care after emergency services back to the referring facility; and

c. The policy concerning notification of the patient's family of emergencies and of arrangements that have been made for referring or transferring the patient to another facility for emergency service.

(c) Psychiatric services shall be available twenty-four (24) hours a day on at least an on-call basis.

(d) There shall be sufficient physician staff coverage for all psychiatric and [A] medical services of the hospital in keeping with their size and scope of activity.

(e) The attending physician shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(2) Nursing services.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.

(b) The psychiatric nursing service shall be under the direction of a registered nurse who:

1. Has a master's degree in psychiatric or mental health nursing, or its equivalent, from a school of nursing accredited by the National League for Nursing; or

2. Has a baccalaureate degree in nursing with two (2) years' experience in nursing administration or supervision and experience in

psychiatric nursing.

(c) There shall be a registered nurse on duty twenty-four (24) hours a day.

(d) There shall be an adequate number of registered nurses, licensed practical nurses, and other nursing personnel to provide the nursing care necessary under each patient's active treatment program.

(e) There shall be continuing in-service and staff development programs to prepare the registered nurses and other nursing personnel for active participation in interdisciplinary meetings affecting the planning or implementation of nursing care plans for patients.

(3) Psychological services.

(a) The hospital shall provide psychological services to meet the needs of patients.

(b) Psychological services shall be provided under the direction of a licensed psychologist.

(c) There shall be an adequate number of psychologists, consultants, and supporting personnel to assist in essential diagnostic formulations, and to participate in program development and evaluation of program effectiveness, in training activities and in therapeutic interventions.

(4) Therapeutic activities.

(a) The hospital shall provide a therapeutic activities program that is appropriate to the needs and interests of the patients and is directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(b) The number of qualified therapists, support personnel, and consultants shall be adequate to provide comprehensive therapeutic activities, such as occupational, recreational, and physical therapy, consistent with each patient's active treatment program.

(5) Pharmaceutical services. The hospital shall comply with requirements of 902 KAR 20:016, Section 4(5) and the following additional requirements:

(a) Medications shall be administered by a registered nurse, a physician, or dentist, except in the case of a licensed practical nurse under the supervision of a registered nurse.

(b) No medication shall be given without a written order signed by a physician, or dentist when applicable, or advanced registered nurse practitioner as authorized in 1996 Ky. Acts ch. 342, or therapeutically-certified optometrists as authorized in 1996 Ky. Acts ch. 376. Telephone orders for medications shall be given only to licensed practical or registered nurses or a pharmacist and signed by the physician, [or] dentist, advanced registered nurse practitioner or therapeutically-certified optometrist within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

(6) Laboratory services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(4) concerning the provision of laboratory and pathology services.

(7) Social services.

(a) The hospital shall provide social services to meet the need of the patients.

(b) There shall be a director of social services who has a master's degree from an accredited school of social work.

(c) There shall be an adequate number of social workers, consultants, and other assistants or case aides to perform the following functions:

1. Secure information about patients development and current life situations to provide psychosocial data for diagnosis and treatment planning and for direct therapeutic services to patients, patient groups or families;

2. Identification or development of community resources including family or foster care programs;

3. Participate in interdisciplinary conferences and meetings concerning diagnostic formulation, treatment planning and progress

reviews; and

4. Participate in discharge planning, arrange for follow-up care, and develop mechanisms for exchange of appropriate information with sources outside the hospital.

(8) Dietary services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(3), pertaining to the provision of dietary services, plus the additional requirements contained in this subsection.

(a) Dietary service personnel who have personal contact with the patients shall be made aware that emotional factors may cause patients to change their food habits and shall inform appropriate members of the professional staff of any change.

(b) Meals shall be provided in central dining areas for ambulatory patients.

(9) Radiology services. If radiology services are provided within the facility, the hospital shall comply with the requirements of 902 KAR 20:016, Section 4(6) concerning the provision of such services. If they are not provided within the facility, the hospital shall have arrangements with an outside source, which shall be outlined in a written plan, for the provision of radiology services. The outside radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

(10) Other services. If surgery, anesthesia, physical therapy or outpatient services are provided within the facility, the hospital shall comply with the applicable sections of 902 KAR 20:016.

(11) Chemical dependency treatment services. Psychiatric hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Sections 3 and 4, and designate the location and number of beds to be used for this purpose.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: September 30, 1996

FILED WITH LRC: October 9, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1996, at 9 a.m., in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by November 14, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently thirteen (13) licensed psychiatric hospitals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs

should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.
2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.
3. Additional factors increasing or decreasing costs: No additional factors.
- (b) Reporting and paperwork requirements: No additional paperwork.
- (4) Assessment of anticipated effect on state and local revenues: No effect.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.
 - (b) Kentucky: No comments on this subject were received but no impact expected.
- (7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: No
 - (c) If detrimental effect would result, explain detrimental effect:
- (9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No conflict.
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?
- (10) Any additional information or comments:
- (11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

**CABINET FOR HEALTH SERVICES
Office of Inspector General
(Amendment)**

902 KAR 20:320. Psychiatric residential treatment facility operation and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.450 to 216B.459, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, ~~[216B.105]~~ 216B.450 to 216B.459, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042[-, ~~216B.105]~~ and 216B.450 to 216B.459 mandate that the Kentucky Cabinet for Health Services ~~[Human Resources]~~ regulate health facilities and services. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in psychiatric residential treatment facilities. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well-defined limits, based on the individual's license, education, training,

experience, competence, and judgment.

- (2) "Direct-care staff" means residential or child-care workers who directly supervise residents.
- (3) "Freestanding" means a completely detached ~~[and separate]~~ building[-, street access, telephone service, dining, and street address].
- (4) "Full-time equivalent (FTE)" for this administrative regulation means one (1) employee working thirty-seven and one-half (37.5) hours per week or a combination of the hours worked by more than one (1) part-time employee totaling thirty-seven and one-half (37.5) hours per week.
- (5) "Governing body" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the facility is vested.
- (6) "Holding" means forced positioning of a resident by staff without use of mechanical devices.
- (7) "Licensure agency" means the Division of Licensing and Regulation in the Office of the Inspector General, Cabinet for Health Services ~~[Human Resources]~~.
- (8) "Living unit" means the area that is supplied by the facility for daily living and therapeutic interaction of the residents. There shall be a maximum of eight (8) residents per living unit.
- (9) "Mental health associate" is an individual with a minimum of a bachelor's degree in a mental health related field.
- (10) ~~[(9)]~~ "Professional staff" means a psychiatrist; a psychologist with Ph.D. or master's degree and autonomous functioning, or master's degree under the supervision of a Ph.D.; a social worker with master's degree; a registered nurse with two (2) years' supervised experience in a mental health setting; a recreation therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential or mental health setting for children, or adolescents; and other professionals from disciplines related to the treatment of mental illness, such as a certified marriage and family therapist, occupational, or expressive therapist, with a master's degree in that discipline and specialized training or experience in the treatment of mental illness.
- (11) ~~[(40)]~~ "Psychiatric residential treatment facility (PRTF)" is defined in KRS 216B.450(4). [means a freestanding facility (other than a psychiatric inpatient hospital) with a maximum of eight (8) beds, except for those facilities licensed prior to April 9, 1992, which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) who are capable of self-preservation during an internal disaster. Any entity which has obtained approval for a certificate of need for a sixteen (16) bed facility prior to March 26, 1992, may be licensed by the cabinet as two (2) eight (8) bed facilities located on a common campus. After the effective date of this administrative regulation, no PRTF shall be licensed to be located on property which is contiguous with another licensed PRTF or psychiatric hospital, except as provided for in this subsection.]
- (12) ~~[(44)]~~ "Restraint" means the use of a mechanical device to involuntarily restrain movement of the whole or a portion of a resident's body as a means of controlling a resident's physical activities to protect the resident or others from injury or the use of intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to the resident with the sole or primary purpose of controlling or limiting the physical activities of the resident. Restraint is differentiated from mechanisms usually and customarily employed during medical, diagnostic, or surgical procedures.
- (13) ~~[(42)]~~ "Seclusion" means the involuntary confinement of a resident in a room, which the resident is physically prevented from leaving, for any period of time.
- (14) ~~[(43)]~~ "Special treatment procedures" means any procedure such as restraint or seclusion and holding which may have abuse potential or be life threatening.
- (15) ~~[(44)]~~ "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant profes-

sional.

Section 2. Applicability. (1) A psychiatric residential treatment facility shall be a freestanding eight (8) bed facility.

(a) An entity which was licensed as a PRTF prior to April 9, 1992, may be licensed within a single building for a maximum of sixteen (16) beds, but shall have a minimum of two (2) separate living units. A living unit in a sixteen (16) bed PRTF shall have no more than eight (8) beds.

(b) An entity which has obtained approval for a certificate of need for a sixteen (16) bed PRTF prior to March 26, 1992, may be licensed by the cabinet as two (2) freestanding eight (8) bed PRTFs located on a common campus.

(c) An eight (8) bed PRTF may be located on a common campus with an existing PRTF, but each shall be freestanding. [A certificate of need shall be required for all psychiatric residential treatment facilities.]

(2) If a psychiatric residential treatment facility is located on grounds shared by another licensed facility other than a PRTF, the following shall apply:

(a) The residents of the PRTF [residential treatment facility] and the licensed facility with which it shares grounds shall not have any joint activities or interactions, except for organized education activities conducted by a school operated by the local educational authority for residents for whom it is determined by the local educational authority that the program provided by the school is appropriate for all residents in the program and is provided in accordance with Section 12(6) of this administrative regulation, or organized recreational activities;

(b) The program director and direct-care staff shall not serve both the licensed facility with which it shares grounds and the PRTF [residential treatment facility];

(c) If the provisions of paragraph (a) of this subsection are met, the only services or components of the physical plant that may be shared are those related to housekeeping, maintenance, dietary and recreational facilities or grounds.

(3) PRTF's that are located on the same grounds in accordance with subsection (1) of this section ~~[(1) of this administrative regulation]~~ may share joint activities and staff.

Section 3. Licensure. The psychiatric residential treatment facility shall comply with all the conditions for licensure contained in 902 KAR 20:008.

Section 4. Governing Body. Each facility shall have a governing body with overall authority and responsibility for the facility's operation.

(1) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative or executive act.

(2) A facility that is part of a multifacility system or is operated by a government agency shall have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body shall be specified in writing.

(4) If a business relationship exists between a governing body member(s) and the organization, there shall be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall include at least the following:

(a) Adopting bylaws that describe how the governing body, through the program director, shall develop policies and procedures and make sufficient resources available (e.g., funds, staff, equipment, supplies, and facilities) to assure that the facility is capable of providing appropriate and adequate services to residents;

(b) Overseeing the system of financial management and accountability;

(c) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care;

(d) Electing, appointing, or employing the program director, clinical director, and other supervisors or administrators to direct the clinical and administrative activities of the facility, and defining the qualifications, authority, responsibility, and function of such positions;

(e) Establishing an organization table and establishing bylaws, rules or policies and procedures to guide the relationships between itself, the administrative staff, the direct-care staff, the professional staff, and the community. The bylaws, rules or policies and procedures shall define the means by which the administrative, direct-care, and professional staffs cooperatively function, participate in the development of policies concerning program management and resident care, and report to the governing body. The bylaws, rules or policies and procedures shall be reviewed at least every two (2) years and revised as necessary; and

(f) Approving appointments to the professional staff and granting or revising clinical privileges upon the documented recommendation of the clinical director.

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) When a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 5. Program Director. (1) The program director shall be employed by the governing body and shall be responsible for the day-to-day management and ongoing direction of the facility's program. In the event of the program director's absence, he shall designate a person who shall be responsible for the day-to-day management of the facility.

(2)(a) The program director shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems.

(b) Minimum qualifications shall be those defined as professional staff in Section 1 of this administrative regulation, or at least a master's degree in education with appropriate licenses.

(c) The program director shall have two (2) years experience in services to children or adolescents including administrative responsibility in an organization for children and adolescents; three (3) professional references; two (2) personal references; and a police record check.

(d) If there is a prior crime conviction or pleas of guilty pursuant to KRS 17.165 or a Class A felony, the applicant shall not be employed.

(3) The program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;

(b) Hiring and direction of personnel;

(c) Assuring that sufficient staff meeting minimum standards under appropriate supervision are on duty to meet the needs of the residents at all times;

(d) Approving purchases and payroll;

(e) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;

(f) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(g) Preparation of reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services

to residents;

(h) Preparation of a written manual that defines policies and procedures which is regularly revised and updated; and

(i) Assuring that all written facility policies, plans, and procedures are followed.

(4) The program director shall attend and maintain documentation of attendance and participation of staff in continuing education programs.

Section 6. Administration and Operation. (1) Written plan.

(a) The governing body shall formulate and specify the facility's goals and objectives and describe its programs in a written plan so that the facility's performance can be measured.

(b) A copy of the written plan shall be given to all professional staff and to the program director.

(c) The written plan shall be reviewed at least annually and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the plan shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(d) The written plan shall include the following:

1. An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

2. A service philosophy with clearly defined assumptions and values;

3. Estimates of the clinical needs of the children and adolescents in the area served by the facility;

4. The services provided by the facility in response to needs;

5. The population served, including age groups and other relevant characteristics of the resident population;

6. The intake or admission process, including how the initial contact is made with resident and the family or significant others;

7. The assessment and evaluation procedures provided by the facility;

8. The methods used to deliver services to meet the identified clinical needs of the residents served;

9. The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

10. The methods used to create a home-like environment for all residents;

11. The methods, means and linkages by which the facility will involve all residents in community activities, organization, and events;

12. The treatment planning process and the periodic review of therapy;

13. The discharge and aftercare planning processes;

14. The organizational relationships of each of the facility's therapeutic programs, including channels of staff communication, responsibility, and authority, as well as supervisory relationships;

15. How all professional services will be supervised by qualified, experienced personnel;

16. How all members of the professional and direct-care staff who have been assigned specific treatment responsibilities are qualified by training or experience and demonstrated competence and have appropriate clinical privileges; or are supervised by professional staff members who are qualified by experience to supervise such treatment;

17. How the facility will be linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Social Services offices and facilities, and school systems in the facility's service area; and

18. The means by which the facility provides, or makes arrangements for the provision of:

a. Emergency services and crisis stabilization;

b. Discharge and aftercare planning, that promotes continuity of

care; and

c. Education and vocational services, whether provided by the facility or by agreement. Educational services to be provided by local education agency or a private agency, at a minimum, shall be arranged for sixty (60) days prior to the need for the service to be provided.

(2) Professional staff.

(a) The facility shall employ sufficient appropriately qualified professional staff to meet the treatment needs of residents and the goals and objectives of the facility.

(b) Professional staff shall meet all requirements in the licensing, registration, or certification laws relating to their respective professions.

(c) Staffing. The facility shall meet the following specific requirements with regard to staffing:

1. A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed to meet the treatment needs of the residents and the functions which shall be performed by a psychiatrist specified within this administrative regulation. If a facility has residents ages twelve (12) and under, the psychiatrist shall be board-eligible or board-certified in child psychiatry.

2. A recreational therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential, or mental health setting for children and adolescents shall be employed to meet the treatment needs of the residents and the functions which shall be performed by a recreational therapist specified within this administrative regulation.

3. A total of at least one (1) full-time staff shall be employed from one (1) of the following professions:

a. Psychologist with Ph.D. or master's degree and autonomous functioning, or master's degree under supervision of a Ph.D.;

b. Social worker with master's degree with two (2) years of inpatient or outpatient clinical experience in psychiatric social work, or a person who meets the qualifications of the professional staff referenced in Section 1(10) of this administrative regulation with two (2) years of experience in a residential setting for children; or

c. Registered nurse with two (2) years' supervised experience in a mental health setting.

4. Staff for the profession listed in subparagraph 3 of this paragraph who is not employed on a full-time basis, shall be employed or employed under contract at least ten (10) percent of full-time equivalency.

5. A member of the professional staff shall be on the unit or otherwise interacting with residents, in addition to planned verbal therapies, setting the tone of the therapeutic milieu at least two (2) hours each weekday and four (4) hours one (1) day each weekend during a nonschool waking-hour shift.

6. Appropriate professional staff shall be available to assist on-site in emergencies on at least an on-call basis at all times.

7. A physician shall be available on at least an on-call basis at all times.

(d) Clinical director. The governing body shall designate one (1) member of the full-time professional staff as clinical director.

1. In addition to the requirements related to his profession, the clinical director shall have at least a master's degree in a field related to the treatment of mental illness and two (2) years' supervisory experience in a program for children or adolescents with emotional problems.

2. The governing body shall define the authority and duties of the clinical director in its bylaws.

3. The clinical director may be the program director if the qualifications of both positions are met.

4. The clinical director shall supervise professional staff and be responsible for the maintenance of the facility's therapeutic milieu.

(e) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that specify the following:

1. The clinical privileges of professional staff;
2. The responsibility of professional staff for supervising and directing individuals who require supervision or direction in the provision of resident care services;

3. The responsibilities of physicians in relation to nonphysician members of the professional staff; and

4. The responsibility of professional staff for accounting to the governing body for the quality of clinical care provided to the residents, and for its ethical conduct and professional practice.

(3) Direct-care staff.

(a) The facility shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Direct-care staff shall be a mental health associate or hold a high school diploma or equivalency and have two (2) years' experience in a program in the mental health field serving children or adolescents. Completion of a twenty-hour (24) hour training curriculum meeting the requirements of subsection (8)(f) within one (1) month of employment may be substituted for experience, except that no direct-care staff so qualified shall be given clinical privileges in his first year of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan shall meet each of the following requirements:

1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for every eight (8) residents at all times when residents awake and are not in school;

2. At least three (3) direct-care staff members shall be assigned to direct-care responsibilities during normal waking hours when the residents are on-site; however, if the number of residents present on-site is six (6) or fewer, the number of direct-care staff members may be reduced to two (2);

3. At least one (1) direct-care staff member shall be assigned to direct-care responsibilities for each three (3) residents who are twelve (12) and under and one (1) for each four (4) adolescents who are over twelve (12) during all hours the residents are awake, not on the living unit, and not in school;

4. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep. A minimum of one (1) additional direct-care staff member who is a mental health associate shall be immediately available on-site to assist with emergencies or problems which might arise;

5. If a member of the professional staff is directly involved in an activity with a group of residents, he may meet the requirement for a direct-care staff member; and

6. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that:

1. Specify the clinical privileges, if any, of each member of the direct-care staff;

2. Provide for the supervision of the direct-care staff; and

3. Describe the responsibilities of direct-care staff in relation to professional staff.

(4) Support staff.

(a) Environmental services. There shall be an adequate number of domestic and maintenance staff to maintain the facility's buildings and grounds in a healthful, comfortable condition and in good repair. Such services may be provided by contractual agreement.

(b) Clerical staff. The facility shall employ a sufficient number of clerical staff qualified by high school diploma or equivalency to maintain correspondence, records, reports and files.

(5) Student field placements or [f] internships. The facility shall ensure that student interns are supervised directly by an appropriate

paid staff member who will act as a liaison between the facility and the school making placements.

(6) Volunteers.

(a) The facility may use volunteers to help meet residents' basic needs for social interaction, self-esteem, and self-fulfillment.

(b) The governing body shall adopt written policies and procedures which address screening, selection, and supervision of all volunteers.

(c) Volunteers used within the program shall meet the qualifications for the positions for which they volunteer.

(d) Volunteers shall not be used in place of required staff.

(e) Volunteers shall be oriented to the facility's goals and services and given appropriate clinical background regarding the facility's residents.

(7) Part-time employees. Part-time employees shall meet minimum qualifications of full-time staff and shall not be utilized to the extent that continuity in resident care is disrupted by frequent shift changes or changes in personnel from day-to-day.

(8) Staff development.

(a) Appropriate staff development programs shall be provided for administrative, professional, direct-care, and support staff under the supervision and direction of the program director or designee[~~(e)~~]. Responsibility for any part of the staff development program may be delegated to appropriately qualified individuals.

(b) The participation of the program director and professional, direct-care, and support staff in staff development programs shall be documented.

(c) Professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with twenty (20) hours per year of in-service training by the facility.

(d) Library services shall be made available to meet the professional and technical needs of the facility staff. A facility which does not maintain a professional library shall have arrangements with a library or institution for use of its professional library.

(e) The facility shall communicate and collaborate, as appropriate, with national, state, and local mental health professional organizations in planning and providing ongoing training.

(f) The program director shall require that each staff member working directly with residents demonstrate basic knowledge in the following areas:

1. Child and adolescent growth and development;

2. Therapeutic principles and modalities used in the facility;

3. Building and maintaining a positive therapeutic milieu on the living unit;

4. Techniques of group and child management; and

5. Detection and reporting of child abuse and neglect.

(9) Employment practices.

(a) The facility shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The facility shall maintain job descriptions approved by the governing body for all positions specifying the qualifications, duties, and supervisory relationship of the position. Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, salary range for each position shall be provided.

(e) The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employ-

ees. The governing body shall establish a mechanism for notifying employees of changes in the policies and procedures.

(f) Information on the following shall be included in the policies and procedures:

1. Employee benefits;
2. Recruitment;
3. Promotion;
4. Training and staff development;
5. Employee grievances;
6. Safety and employee injuries;
7. Relationships with employee organizations;
8. Disciplinary systems;
9. Suspension and termination mechanisms;
10. Rules of conduct;
11. Lines of authority;
12. Performance appraisals;
13. Wages, hours and salary administration; and
14. Equal employment opportunity and, when required, affirmative action policies.

(g) The personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

(h) The policies and procedures shall require appropriate criminal history and police record checks for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

(i) The policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

(j) A personnel record shall be kept on each staff member and shall contain the following items:

1. Application for employment;
2. Written references and a record of verbal references;
3. Verification of all training and experience and of licensure, certification, registration, or renewals;
4. Wage and salary information, including all adjustments;
5. Performance appraisals;
6. Counseling actions;
7. Disciplinary actions;
8. Commendations;
9. Employee incident reports; and
10. Initial and subsequent health clearances.

(k) The policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l) Performance appraisals shall relate job description and job performance and shall be written. The criteria used to evaluate job performance shall be objective.

Section 7. Resident Rights. (1) The facility shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, the facility shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

- (a) Each resident's access to treatment, regardless of race, religion, or ethnicity;
- (b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;
- (c) Each resident's right to be provided treatment and care in the least restrictive environment possible;
- (d) Each resident's right to an individualized treatment plan;
- (e) Each resident's and family's participation in planning for

treatment;

(f) The nature of care, procedures, and treatment that he shall receive;

(g) The risks, side effects, and benefits of all medications and treatment procedures used; and

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility when the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice.

(4) The rights of residents shall be written in language which is understandable to the resident, his parents, custodians, or guardians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning resident rights shall assure and protect the resident's personal privacy within the constraints of his treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;

(b) Sending and receiving mail without hindrance or censorship; and

(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy must be limited, the resident and his parent, guardian, or custodian shall receive a full explanation. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

- (a) To whom the grievance is to be addressed; and
- (b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, television, movies, or photographs.

(9) The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his record maintained by the facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10) The resident shall be allowed to work for the facility only under the following conditions:

- (a) The work is part of the individual treatment plan;
- (b) The work is performed voluntarily;
- (c) The patient receives wages commensurate with the economic value of the work;
- (d) The work project complies with applicable law and administrative regulation; and
- (e) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) Written policy and procedure developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian, or custodian.

(12) The facility shall prohibit all cruel and unusual disciplinary measures including the following:

- (a) Corporal punishment;
- (b) Forced physical exercise;

- (c) Forced fixed body positions;
 - (d) Group punishment for individual actions;
 - (e) Verbal abuse, ridicule, or humiliation;
 - (f) Denial of three (3) balanced nutritional meals per day;
 - (g) Denial of clothing, shelter, bedding, or personal hygiene needs;
 - (h) Denial of access to educational services;
 - (i) Denial of visitation, mail, or phone privileges for punishment;
 - (j) Exclusion of the resident from entry to his assigned living unit; and
 - (k) Restraint or seclusion as a punishment or employed for the convenience of staff.
- (13) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.
- (14) Written rules of resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body. Residents shall participate in the development of the rules to a reasonable and appropriate extent. These rules shall be based on generally acceptable normal and natural behavior for the resident population served.
- (15) The application of disciplinary measures shall relate to the violation of established rules.

Section 8. Resident Records. (1) The facility shall have written policies or procedures concerning resident records developed in consultation with professional staff and a registered records administrator and approved by the governing body.

(2) The facility shall maintain a written resident record on each resident, to be directly accessible to staff members caring for the resident.

(3) The resident record shall contain at a minimum:

- (a) Basic identifying information;
- (b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;
- (c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;
- (d) The report by the parent, guardian, or custodian of the patient's immunization status;
- (e) A psychosocial assessment of the resident and his family, including:

- 1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and
- 2. A summary of the resident's psychosocial needs.

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, when applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including evaluations of the following:

- 1. Motor development and functioning;
- 2. Sensorimotor functioning;
- 3. Speech, hearing, and language functioning;
- 4. Visual functioning; and
- 5. Immunization status.

(4) The resident record shall also include:

(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident.

(b) Professional progress notes which shall be completed following each professional service except when the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the professional who provided the service.

(c) Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the residents. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly. Direct-care notes shall be signed and dated by the direct-care staff making the entry.

(d) Special clinical justifications for the use of special and unusual treatment procedures and reports.

(e) Discharge summary.

(f) If a patient dies, the resident record shall include a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(5) The facility shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

(a) The name of the person, agency, or organization to which the information is to be disclosed;

(b) The specific information to be disclosed;

(c) The purpose of disclosure; and

(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 9. Quality Assurance. (1) The facility shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) The facility shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the governing body and shall:

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

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

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

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

(e) Establish thresholds for the indicators at which further evaluation of the care is triggered;

(f) Collect and organize the data for each indicator;

(g) Evaluate the care when the thresholds are reached in order to identify problems or opportunities to improve care;

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

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

(j) Communicate relevant information to other individuals, departments, or services and to the facility-wide quality assurance program.

(3) The facility shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record should be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 10. Admission Criteria. (1) The facility shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);

(b) Age and sex of accepted;

- (c) Criteria that preclude admission;
 - (d) Clinical needs and problems typically addressed by the facility's programs and services;
 - (e) Criteria for discharge; and
 - (f) Any preplacement requirements of the resident, his parents, guardians, custodians, or the placing agency.
- (3) A facility may only admit children with an emotional disability as defined in KRS 200.503(1) or a severe emotional disability as defined in KRS 200.503(2) (this does not preclude the facility from admitting a child with multiple diagnoses) who meet its written admission criteria and for whom the facility finds:
- (a) Less-restrictive treatment resources accessible and available in the resident's community will not meet his treatment needs;
 - (b) Proper treatment of the resident's psychiatric condition requires care and treatment under the direction of a psychiatrist within a psychiatric residential treatment facility;
 - (c) Proper treatment of the resident's psychiatric condition requires twenty-four (24) hour care in a facility which provides comprehensive and structured therapeutic mental health treatment in a less structured environment than an inpatient hospital; and
 - (d) Care and treatment in a psychiatric residential treatment facility can reasonably be expected to improve the resident's condition or prevent further regression so that residential treatment facility services will no longer be needed, provided that a poor prognosis shall not in itself constitute grounds for a denial of admission if treatment can be expected to effect a positive change in prognosis.
- (4) Residents admitted to the facility shall have obtained age six (6), but not attained age eighteen (18). Residents may remain in care until age twenty-one (21) if admitted by their 18th birthday. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit.
- (5) Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted.

Section 11. Resident Management. (1) Intake.

- (a) The facility shall have written policies and procedures approved by the governing body for the intake process which addresses at a minimum the following:
- 1. Referral, records, and statistical data to be kept regarding applicants for residence;
 - 2. Criteria for determining the eligibility of individuals for admission;
 - 3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and
 - 4. Procurement of appropriate consent forms. This may include the release of educational and medical records.
- (b) The intake process shall include an initial assessment of the resident performed by the professional staff. The results of the assessment shall be explained to the parent or guardian or custodian if appropriate, and to the resident. As a condition at admission, the assessment shall conclude that:
- 1. The treatment required by the resident is appropriate to the intensity and restrictions of care provided by the facility; and
 - 2. Alternatives for less intensive and restrictive treatment are not available or accessible to the resident.
- (c) The intake process shall be designed to provide at least the following information:
- 1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;
 - 2. Temporary treatment plan including the proposed initial level of intervention with the resident, the health and safety needs, the education and activity plan, and legal, custody and visitation orders; and

- 3. Proposed discharge plan and anticipated length of stay.
 - (d) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:
 - 1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;
 - 2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and
 - 3. Preparation of the staff and residents of the facility for the new resident.
 - (e) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 USC 1400.
 - (f) The temporary treatment plan shall be reviewed by all staff involved in the resident's treatment, approved by the clinical director and psychiatrist, and implemented upon admission.
- (2) Assessment.
- (a) A complete evaluation and assessment shall be performed for each resident which includes, but is not necessarily limited to, physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.
- (b) The physical examination of each resident shall be initiated within twenty-four (24) hours after admission and shall include, but not be limited to, evaluations of the following:
- 1. Motor development and functioning;
 - 2. Sensorimotor functioning;
 - 3. Speech, hearing, and language functioning;
 - 4. Visual functioning; and
 - 5. Immunization status. If a resident's immunization is not complete as defined in the report of the Committee on Infectious Diseases of the American Academy of Pediatrics, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.
- (c) If the resident has had a complete physical examination by a qualified physician within the previous three (3) months which includes the requirements of subsection (b) of this section and if the facility obtains complete copies of the record, that examination may be used to meet the requirement for a physical examination in subsection (b) of this section.
- (d) A physician shall be responsible for assessing each resident's physical health, his need for a current examination in spite of one done in the prior three (3) months, and his need for special clinical examinations and tests within twenty-four (24) hours of admission.
- (e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.
- (f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:
- 1. A history of previous emotional, behavioral, and substance abuse problems and treatment;
 - 2. The resident's current emotional and behavioral functioning;
 - 3. A direct psychiatric evaluation;
 - 4. When indicated, psychological assessments, including intellectual, projective, and personality testing;
 - 5. When indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and
 - 6. An evaluation of the developmental age factors of the resident.
- (g) The facility shall have an assessment procedure for the early

detection of mental health problems that are life threatening, are indicative of severe personality disorganization or deterioration, or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:

1. Environment and home;
2. Religion;
3. Childhood history;
4. Financial status;
5. The social, peer-group, and environmental setting from which the resident comes; and
6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age sixteen (16) and older, a vocational assessment of the resident shall be done which includes the following:

1. Vocational history;
2. Education history, including academic and vocational training; and
3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with and attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) When appropriate, a legal assessment of the resident shall be undertaken and shall include the following:

1. A legal history; and
2. A preliminary discussion to determine the extent to which the legal situation will influence his progress in treatment and the urgency of the legal situation.

(3) Treatment plans.

(a) Within seventy-two (72) hours following admission, the clinical director or a member of the professional staff designated by him shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team conference within ten (10) days of admission for any resident remaining in treatment. It shall be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section, include a substantiated diagnosis and the short-term and long-range treatment needs, and address the specific treatment modalities required to meet the resident's needs.

1. The treatment plan shall contain specific and measurable goals for the resident to achieve.

2. The treatment plan shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

3. The treatment plan shall specify criteria to be met for termination of treatment.

4. The treatment plan shall include any referrals necessary for services not provided directly by the facility.

5. The resident shall participate to the maximum extent feasible in the development of his treatment plan, and such participation shall be documented in the resident's record.

6. The treatment plan shall specify the ways in which the resident will participate in community activities, organizations, and events.

7. The treatment plan shall address ways in which the environment for the resident is normalized.

8. A specific plan for involving the resident's family or significant others shall be included in the treatment plan. The parent, guardian, or custodian shall be given a copy of the resident's master treatment plan. The master treatment plan shall identify the professional staff member who is responsible for coordinating and facilitating the family's involvement throughout treatment.

9. The treatment plan shall be reviewed and updated through multidisciplinary team conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter.

10. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The master treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it, and approved by the clinical director.

(4) Progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:

1. Documentation of implementation of the treatment plan;
2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and
3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, when available, to include them in the resident record.

(d) The resident's progress and current status in meeting the goals and objectives of his treatment plan shall be regularly recorded in the resident record.

(5) Discharge planning. The facility shall have written policies and procedures for discharge of residents.

(a) Discharge planning shall begin at admission and be documented in the resident's record. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan. This plan shall be maintained in the resident's record and reviewed and updated with the master treatment plan.

(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for aftercare service(s), and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.

(d) A facility deciding to release a resident on an unplanned basis shall:

1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;

2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing

aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency~~(ies)~~ copies of the resident's records and discharge summary.

3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that such placement reasonably meets the needs of the resident; and

4. Provide a written statement explaining the reasons for discharge to the receiving agency.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:

1. Name, address, phone number, and relationship of the person to whom the resident was released;

2. Description of circumstances leading to admission of the resident to the facility;

3. Significant problems of the resident;

4. Clinical course of the resident's treatment;

5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;

6. Special clinical management requirements including psychotropic drugs;

7. Brief descriptive overview of the aftercare plan designed for the resident; and

8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

(6) The facility shall request periodic follow-up reports from each agency providing services to the resident in accordance with the aftercare plan, and shall be responsible for documenting the outcome of the aftercare plan as possible.

Section 12. Services. The facility shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident.

(1) Mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 11 of this administrative regulation.

(b) The mental health services available through the residential treatment facility shall include the services listed below. These mental health services shall be provided directly by the residential treatment facility:

1. Case coordination services to assure the full integration of all services provided to each resident. Case coordination activities include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

2. Planned verbal therapies including formal individual, family, and group therapies. These therapies shall be provided on site. These therapies include psychotherapy and other face-to-face verbal contacts between staff and the resident which are planned to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit. Verbal contacts that are incidental to other activities are excluded from this service.

3. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself and to function effectively in community settings. Task and skill training activities include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Physical health services.

(a) The physical health services available through the residential treatment facility shall include the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement.

1. Assessments and evaluations as required in Section 11 of this administrative regulation;

2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;

5. Health and sex education;

6. An ongoing immunization program; and

7. A physical examination within five (5) days of the client's planned date of discharge from the facility.

(b) When physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:

1. Referral of residents;

2. Qualifications of staff providing services;

3. Exchange of clinical information; and

4. Financial arrangements.

(3) Dietary services.

(a) The facility shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by the facility staff or through written contractual agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietetic service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a qualified dietician registered by the Commission on Dietetic Registration and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;

2. Shall not be withheld as punishment; and

3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Emergency services.

(a) The facility shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, or death.

(b) The facility shall provide or arrange for the training of all direct-care and professional staff in first aid and CPR.

(c) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather. The plan shall be posted. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building. Fire drills shall be practiced in accordance with state fire administrative regulations.

(d) The facility shall have written procedures to be followed by staff in the event of a psychiatric, medical, or dental emergency of a resident that specifies:

1. Notification of designated member of the facility's chain of command;
2. Designation of staff person who shall decide to refer resident to outside treatment resources;

3. Notification of resident's parent, guardian, or custodian;
4. Transportation to be used;
5. Staff member to accompany resident;
6. Necessary consent and referral forms to accompany resident; and

7. Name, location, and telephone of designated treatment resources.

(e) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;
2. Licensed dentist and an alternate designee;
3. Licensed hospital; and
4. Licensed hospital with an accredited psychiatric unit.

(5) Pharmacy services. The facility shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the following requirements:

(a) Medications shall be administered by a registered nurse, physician, or dentist, except in the case of a licensed practical nurse, certified medication aide, or mental health associate under the supervision of a registered nurse. A mental health associate shall have successfully completed the medicine administration course approved by the Kentucky Board of Nursing for use in child caring facilities;

(b) Medications shall not be given without a written order signed by a physician, or dentist when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the physician or dentist within twenty-four (24) hours from the time the order is given;

(c) Psychotropic medications shall be prescribed only when clinically indicated as one (1) facet of a program of therapy. The facility shall ensure that no stimulant or psychotropic medication is administered solely for the purpose of program management or control, and that no medication is prescribed for the purposes of experimentation or research;

(d) All medications shall require "stop orders";

(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal;

(f) There shall be a systematic method for prescribing, ordering, receipting, storing, dispensing, administering, distributing and accounting for all medications;

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles;

(h) Self-administration of medication shall be permitted only when specifically ordered by the responsible physician and supervised by a member of the professional staff or a mental health associate. Drugs to be self-administered shall be stored in a secured area and be made available to the resident at the time of administration;

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered;

(j) Drugs brought into the facility by residents shall not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs are to be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

(6) Education and [v] vocational services.

(a) Educational and vocational services available through the facility shall include the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular educa-

tion, vocational education, and special education as appropriate to meet the needs of the residents.

1. Educational services may be provided directly by the facility, or may be provided by written agreement with the local school district in which the facility is located or with a nonpublic school program which is specially accredited and approved by the Kentucky Department of Education [(KDE) and is approved by the KDE] to provide special education services to students with disabilities.

2. If the educational services are provided by the facility, the school program must be specially accredited and approved by the Kentucky Department of Education [KDE and be approved by the KDE] to provide special education services to students with disabilities.

3. Educational services provided by a local school district may be provided within the facility or within the local school district.

4. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. In any case, education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the residential treatment facility.

(b) When the education services are not provided directly by the facility, there shall be a written agreement between the provider of education services and the facility. The provider shall be a state education department-approved program. The written agreement shall, at a minimum, address:

1. Qualifications of staff providing services;

2. Participation of educational and vocational staff in the treatment planning process;

3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's master treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 USC 1400.

(e) The facility shall ensure that education services are developed and implemented in conjunction with the master treatment plan and meet the following requirements:

1. The resident's teacher shall be a member of the multidisciplinary team, when possible.

2. Each resident's master treatment plan shall include formal academic goals for remediation and continuing education.

3. Each resident eligible for special education services to the handicapped shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized treatment plan [(ITP)] developed by the local school district. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate. The program director or designee shall request an invitation to attend all individualized treatment plan [ITP] meetings. If allowed, the program director or designee shall attend all individualized treatment plan [ITP] meetings.

4. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for children with disabilities pursuant to 20 USC 1400 shall be developed with the opportunity for input from both parties.

(f) The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who may be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Activity services.

(a) The recreational therapist shall prepare a daily schedule of planned recreational activities for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities including physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) The recreational therapist shall direct, consult with, and train staff responsible for leading the scheduled activities.

(c) The recreational therapist shall evaluate the effectiveness of the activity services.

(d) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(e) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. The facility shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

- (a) Referral of residents;
- (b) Qualifications of staff providing services;
- (c) Exchange of clinical information; and
- (d) Financial arrangements.

Section 13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion and holding which may have abuse potential or be life threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself or others or to prevent serious disruption of the therapeutic environment.

(2) Special treatment procedures shall not be used as punishment or as a convenience of staff.

(3) Special treatment procedures may be used only by trained, clinically-privileged staff.

(4) The facility shall have a written plan approved by the governing body for the use of special treatment procedures which at a minimum meet the following requirements:

(a) Any use of special treatment procedures requires clinical justification;

(b) A rationale and the clinical indications for the use of special treatment procedures shall be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;

(c) The plan shall specify the length of time for which a specific approval remains effective; and

(d) The plan shall specify the length of time the special treatment procedure may be utilized.

(5) Restraint or seclusion may be ordered or carried out only after the physician who is authorizing the use of the procedure has conducted a clinical assessment or has consulted with a member of the clinical staff who has conducted a clinical assessment of the resident.

(6) Each written order for restraint or seclusion shall be time

limited and shall not exceed twenty-four (24) hours. No PRN orders for restraint or seclusion may be written.

(7) Restraint or seclusion may be utilized in an emergency by trained, clinically-privileged staff. The emergency implementation of restraint or seclusion shall not exceed thirty (30) minutes at which time a physician staff member's oral order is required if use of the procedure is to continue. The physician's written order to confirm restraint or seclusion shall be entered in the resident's record as soon as possible, but not more than twenty-four (24) hours after the implementation of the procedure.

(8) Use of restraint or seclusion for a period of twenty-four (24) hours shall be approved by a committee made up of the professional staff, the clinical director, and the program director prior to the expiration of the first twenty-four (24) hour order.

(9) Staff who implement special treatment procedures shall have documented training in the proper use of the procedure used and shall be certified in physical management by a nationally recognized training program in which certification is obtained through skilled-out testing.

(10) A professional or direct-care staff member shall be constantly, physically present with a resident in restraint; and attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(11) A professional or direct-care staff person shall always be in the seclusion room with a resident twelve (12) years of age or under so long as the staff person is not placed in undue physical danger due to the relative size and strength of the resident who is in seclusion. Attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(12) Constant visual attention through physical presence, remote video, or window shall be paid to an adolescent who is in seclusion and over twelve (12) years of age or a resident who is under twelve (12) years of age if the staff person would be placed in undue physical danger due to the resident's relative size and strength. Professional or direct-care staff shall check the resident's breathing and talk to the resident every fifteen (15) minutes and shall attend to the resident's regular meals, bathing, and use of the toilet. This attention shall be documented in the resident's record.

(13) At no time may a procedure be used in a manner that causes undue physical discomfort, harm, or pain to a resident.

(14) All uses of special treatment procedures shall be reviewed on a daily basis by the clinical director and evaluated by him for the possibility of unusual or unwarranted patterns of use.

(15) A facility shall not use extraordinary risk procedures including, but not limited to experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(16) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by one (1) or more persons legally qualified to prescribe treatment addressing the rationale for use, methods to be used, specified time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

Section 14. Housekeeping Services. (1) The facility shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the

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following:

- (a) The use, cleaning, and care of equipment;
 - (b) Assessing the proper use of housekeeping and cleaning supplies;
 - (c) Evaluating the effectiveness of cleaning; and
 - (d) The role of the facility staff in maintaining a clean environment.
- (2) A laundry service shall be provided by the facility or through contractual agreement.
- (3) Pest control shall be provided by the facility or through contractual agreement.

Section 15. Infection Control. (1) Because infections acquired in a facility or brought into a facility from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 9, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1996, at 9 a.m., in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by November 14, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: Psychiatric residential treatment facilities. There are presently ten (10) licensed PRTFs.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting

requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: This proposed administrative regulation should make it easier for psychiatric residential treatment services to be provided in a cost effective manner. The accessibility of these services to the adolescent population of the Commonwealth would not be enhanced without the proposed amendments.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

CABINET FOR HEALTH SERVICES

Office of Inspector General
(Amendment)

906 KAR 1:040. Blood establishment inspection [~~licensure~~].

RELATES TO: KRS 216B.010 to 216B.055 [~~216B.120~~], 333.120, 21 CFR Chapter 1, Part 601

STATUTORY AUTHORITY: KRS 214.020, 214.450 to 214.464, 214.468, 214.990(7), EO 96-862 [~~214.466, 21 CFR Chapter 1, part 604~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.452 mandates that the Cabinet for Health Services promulgate administrative regulations to establish fees for the cost of regular inspections of all blood establishments to determine their compliance with KRS 214.450 to 214.464 and 214.468. KRS 214.452(1) requires blood

establishments to be licensed by the United States Food and Drug Administration. Federal regulation 21 CFR Chapter 1, Part 601, does not require Kentucky to conduct the federal inspection required for licensure. This administrative regulation does not conflict with those federal requirements because its purpose is to establish fees for the cost of inspections necessary to determine compliance with KRS 214.450 to 214.464 and 214.468. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its Programs under the Cabinet for Health Services. [KRS 214.450 to 214.466 mandates that specific requirements relating to federal licensure, donor records, administrative procedures and the posting of informational signs must be followed by all blood establishments in the Commonwealth. This administrative regulation has been promulgated to monitor facility compliance with these requirements.]

Section 1. Definitions. "Blood establishment" is defined in KRS 214.450(2). [~~Licensure. All blood establishments, as defined by KRS 214.450, must be licensed by United States Food and Drug Administration (FDA).~~]

Section 2. Annual Inspection. The Office of Inspector General shall conduct an annual inspection of all blood establishments to determine their compliance with KRS 214.450 to 214.464 and 214.468. [~~Donor Records. Donor records shall be maintained by the blood establishment. These records, at a minimum, shall contain the following:~~

- (1) ~~A standardized blood donor consent form; and~~
- (2) ~~A standardized risk factor history form.~~]

Section 3. Fees for Inspections. For inspections conducted by the Office of Inspector General to determine compliance with KRS 214.450 to 214.464 and 214.468, blood establishments shall pay an annual inspection fee in the amount of \$100. [~~Administrative Procedures. The blood establishment shall establish administrative procedures to assure that:~~

- (1) ~~All paid and volunteer donors may self-elect not to donate blood;~~
- (2) ~~The blood establishment refuses to accept for donation or sale any blood from persons at high risk for infection with the human immunodeficiency virus, or who have been medically diagnosed as having acquired immune deficiency syndrome, or who have tested confirmatory positive for infection with the human immunodeficiency virus, or who have a blood borne communicable disease, or who have a blood borne sexually transmitted disease;~~
- (3) ~~Each unit of blood collected by a blood establishment for transfusion into a living human person shall be affixed with the U.S. Food and Drug Administration required label which includes a donor identification number through with the following information can be obtained:~~
 - (a) ~~Date the blood was collected;~~
 - (b) ~~Name of blood establishment;~~
 - (c) ~~Nonidentifying code representing the name of the blood donor;~~
 - (d) ~~A blood establishment serial number for the blood;~~
 - (e) ~~The date of laboratory testing of the blood;~~
 - (f) ~~The name of the person and laboratory testing the blood; and~~
 - (g) ~~The laboratory test results.~~
- (4) ~~The following shall be exempted from the testing requirements in subsection (3) of this section: all blood recovered from a patient through intra-operative salvage or hemodilution, if this blood is an integral part of the ongoing surgery or surgical procedure and is utilized only by the patient from whom the blood is drawn.]~~

Section 4. Payment of Fees. The annual inspection fee shall be due and payable on January 1, 1997, and on January 1 of each succeeding year thereafter. A check for the amount of the fee shall be made payable to the Kentucky State Treasurer and sent to the

Division of Licensing and Regulation, Office of Inspector General, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. [~~Sign Posting. The blood establishment shall post a sign which shall be visible to all potential blood donors. This sign shall read as follows:~~

~~"Persons with acquired immune deficiency syndrome (AIDS), or who have tested confirmatory positive for infection with the human immunodeficiency virus (HIV), or who have a blood borne communicable disease or sexually transmitted disease or who have been exposed to one (1) or more risk factors determined by the U.S. Centers for Disease Control to place such person at high risk for infection with the HIV virus or any AIDS causative agent, are prohibited under Kentucky Revised Statutes from donating or selling blood. Persons violating the law are guilty of a Class D felony. ASK STAFF OF THIS BLOOD ESTABLISHMENT."]~~

Section 5. Enforcement Notification. If the Office of Inspector General (OIG) ascertains that a blood establishment is not meeting the requirements of this administrative regulation, the OIG shall inform the Office of the Attorney General [~~Commonwealth Attorney's Office~~] of a potential violation of KRS 214.452 to 214.464 [~~the applicable statutes~~].

TIMOTHY L. VENO, Inspector General
JOHN MORSE, Secretary

APPROVED BY AGENCY: October 8, 1996

FILED WITH LRC: October 9, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1996, at 9 a.m., in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by November 14, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: 120 acute care hospitals, 24 renal dialysis facilities, and 30 miscellaneous (blood banks, plasma centers).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: Annual report to

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Interim Joint Committee on Health and Welfare on compliance of blood establishments.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 214.452 mandates the process set forth in this regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The regular inspection of blood establishments is intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: The purpose of KRS 214.450 to 214.468 is to assure that applicable federal regulations are complied with through regular state inspections. This administrative regulation implements that program.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: 21 CFR Chapter 1, Part 601.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 CFR Chapter 1, Part 601.

2. State compliance standards. KRS 214.450 to 214.464 and 214.468.

3. Minimum or uniform standards contained in the federal mandate. Blood establishment licenses; issuance and conditions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate? This regulation establishes fees for the cost of regular inspections of blood establishments licensed pursuant to 21 CFR Chapter 1, Part 601.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation is mandated by KRS 214.452.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (Amendment)

907 KAR 1:022. Nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396, 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer Medicaid the program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payment shall be made by the Medicaid Program on [in] behalf of both the categorically needy and medically needy recipients.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Department" means the Department for Medicaid Services or its designee.

(2) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(3) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(4) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.

(5) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(6) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(7) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. Hospital swing beds providing services in accordance with 42 USC 1395ff and 42 USC 1396l shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations.

(8) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency. Some nursing facilities with waiver do not meet Medicare participation requirements.

(9) "Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(10) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen. ["Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in

the institutional setting.

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396t shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.]

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR

shall meet the following requirements:

(1) An application for participation shall be made [to the cabinet] using the procedures specified by the [Commissioner,] Department for Medicaid Services[, Cabinet for Human Resources]. A vendor number shall be assigned to the facility by the department [cabinet] when participation status is achieved.

(2) Each nursing facility shall be required to have participatory status in the program of health care known as Medicare in at least twenty (20) percent of the facility's Medicaid participating beds [(but not less than ten (10) beds, (5) If the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program)] before the conditions of participation for Medicaid shall be deemed met].

(3) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall meet Medicare participation requirements in at least twenty (20) percent of the facility's Medicaid participating beds [(but not less than ten (10) beds, (5) If the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.(7)]

(4) Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and annual resident review requirements specified in 42 USC 1396r, effective with regard to admissions and resident stays occurring on or after January 1, 1989]. Facilities failing to comply with this requirement shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:671, [1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at] 42 CFR 431.153, and 42 CFR 431.154.

(5) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR status[; a facility not appropriately certified shall not participate in the Medicaid Program except for appropriately certified SNFs or ICFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990].

(6) A facility shall have appropriate accreditation to provide specialized rehabilitation services as approved by the state. Appropriate accreditation shall have occurred if [when] the facility has been accredited by a nationally recognized accrediting agency or organization, including:

(a) [such as] The Commission on Accreditation of Rehabilitation Facilities (CARF); or

(b) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

Section 3. Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions shown in Section 1 of this administrative regulation.

(a) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for high intensity services provided to Medicaid eligible individuals meeting high intensity patient status criteria if the services are provided in beds also participating in the Medicare Program. [and]

(b) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for low intensity services provided to Medicaid eligible individuals meeting low intensity patient status criteria if [when] the services are provided in any Medicaid participating beds. (5]

(c) An ICF-MR shall [may] provide and receive payments for ICF-MR services only.

(2) A participating nursing facility may be certified in accordance with standards and conditions specified in the [907 KAR 1:546, Incorporation by reference of the] nursing facility services manual to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

(3) A participating nursing facility may be certified in accordance with standards and conditions specified in the nursing facility services

manual to operate a unit providing care for persons who are ventilator dependent.

Section 4. Determining Patient Status. The department or its designee [Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet,] shall review and evaluate the health status and care needs of the individual [recipient] in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) An individual [A patient] shall not qualify for Medicaid patient status unless the individual [person] is qualified for admission, and continued stay as appropriate, under the preadmission screening and annual resident review criteria specified in 42 USC 1396r [with regard to admissions and resident stays occurring on or after January 1, 1989].

(2) Individuals [Patients] qualify for high intensity nursing care if [when] their needs mandate high intensity nursing or high intensity rehabilitation services on a daily basis and if [when], as a practical matter, the care can only be provided on an inpatient basis. If [Where] the inherent complexity of a service prescribed for an individual [a patient] exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the individual [patient] would qualify for high intensity nursing care. An individual [A patient] with an unstable medical condition manifesting a combination of care needs in the following areas shall qualify for high intensity nursing care:

- (a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;
- (b) Nasogastric or gastrostomy tube feedings;
- (c) Nasopharyngeal and tracheotomy aspiration;
- (d) Recent or complicated ostomy requiring extensive care and self-help training;
- (e) In-dwelling catheter for therapeutic management of a urinary tract condition;
- (f) Bladder irrigations in relation to previously indicated stipulation;
- (g) Special vital signs evaluation necessary in the management of related conditions;
- (h) Sterile dressings;
- (i) Changes in bed position to maintain proper body alignment;
- (j) Treatment of extensive decubitus ulcers or other widespread skin disorders;
- (k) Receiving medication recently initiated, which requires high intensity observation to determine desired or adverse effects or frequent adjustment of dosage;
- (l) Initial phases of a regimen involving administration of medical gases;

(m) Receiving services which would qualify as high intensity rehabilitation services if [when] provided by or under the supervision of a qualified therapist(s), for example: ongoing assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultrasound, short wave, and microwave therapy treatments; hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services

by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low intensity patient status if [when] the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status if [when] the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

- 1. Assistance with wheelchair;
- 2. Physical or environmental management for confusion and mild agitation;
- 3. Must be fed;
- 4. Assistance with going to bathroom or using bedpan for elimination;
- 5. Old colostomy care;
- 6. In-dwelling catheter for dry care;
- 7. Changes in bed position;
- 8. Administration of stabilized dosages of medication;
- 9. Restorative and supportive nursing care to maintain the individual [patient] and prevent deterioration of his condition;
- 10. Administration of injections during time licensed personnel is available.
- 11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care.

12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria if [when] care needs are limited to the following:

- 1. Minimal assistance with activities of daily living;
- 2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;
- 3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;
- 4. Medications that can be self-administered or the individual requires minimal supervision.

(4) An individual [Evaluation of patient status for persons with mental disorders or mental retardation. A person] with a mental disorder or mental retardation meeting the health status and care needs specified in subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals shall be specifically excluded from coverage in the following situations:

(a) If [When] the department [cabinet] determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual [patient], other patients in the facility, or staff of the facility; and

(b) If [When] the nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental

disorder; and

(c) If ~~[When]~~ the individual ~~[patient]~~ does not meet the preadmission screening and annual resident review criteria specified in 42 USC 1396r for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and individuals ~~[persons]~~ with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;
2. Learning to live happily and safely within his own limitations;
3. Obtaining educational experiences that will be useful in self-supporting activities;
4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only if:

1. ~~[When]~~ The individual also has care needs as shown in paragraph (a) or (b) of this subsection;

2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded); and

3. The individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) ~~[It shall be the policy of the cabinet that]~~ No individual shall be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided if the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the individual ~~[patient]~~ no longer requires high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility, payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Individuals ~~[Persons]~~ with Brain Injuries. Individuals ~~[Patients]~~ who are brain injured and meet usual high intensity nursing facility patient status criteria or as qualified under subsection (5) of this section may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if ~~[when]~~ the care is preauthorized by ~~[staff of]~~ the department ~~[for Medicaid Services]~~ using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the head injury into the certified head injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to

exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; and

(c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) The following is a list of indicators for admission and continued stay:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; and

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following is a list of conditions which shall ~~[are]~~ not be considered brain injuries requiring specialized rehabilitation under this section:

(a) Strokes treatable in nursing facilities providing routine rehabilitation services;

(b) Spinal cord injuries in which there are no known or obvious injuries to the intracranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.

(5) An individual ~~[A patient]~~ may qualify for coverage under the brain injury program if the patient meets low-intensity level of care and has sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require an intensity of care which is equal to high intensity nursing care, if the following criteria are met:

(a) The individual ~~[patient]~~ shall not have previously received specialized rehabilitation services (individuals ~~[persons]~~ discharged for the purpose of transfer to another brain injury facility are not considered to have "previously received specialized rehabilitation services") as provided for in this section;

(b) The individual ~~[patient]~~ shall have the potential for rehabilitation;

(c) The care shall be prior authorized on an individual basis by the Department for Medicaid Services; and

(d) The care shall be authorized for no more than six (6) months at any one (1) time.

Section 7. Preauthorization of Provision of Specialized Ventilator Care. Individuals who are ventilator dependent and meet usual high intensity nursing facility patient status criteria may be provided care in a certified distinct part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section and the Nursing Facilities Services Manual.

(1) Facility participation criteria.

(a) The nursing facility shall operate a program of ventilator care within a certified distinct part nursing facility unit which meets the needs of all ventilator patients admitted to the unit.

(b) The unit shall have not less than twenty (20) beds certified for the provision of ventilator care.

(c) The unit shall be required to have an average patient census of not less than fifteen (15) patients during the calendar quarter preceding the beginning of the facility's rate year or the quarter for which certification is being granted in order to qualify for distinct part ventilator nursing facility certification.

(d) The unit shall have a ventilator machine owned by the facility for each certified bed with an additional back up ventilator machine required for every ten (10) beds.

(e) The facility shall have an appropriate program for discharge planning and weaning from the ventilator.

(2) Patient criteria and service characteristics. The following describe general patient criteria and treatment characteristics for distinct part ventilator nursing facilities:

(a) The individual shall be ventilator (or respiration stimulating mechanism) dependent for twenty-four (24) hours per day and requiring twenty-four (24) hours per day high intensity specialty nursing care; or

(b) The individual shall be ventilator (or respiration stimulating mechanism) dependent for twelve (12) hours or more per day during a weaning program with the goal to attain the least mechanical support in the least invasive manner that is consistent with maximal function of the individual and requiring twenty-four (24) hours per day high intensity specialty nursing care;

(c) Admissions from hospitalization or other location should demonstrate two (2) weeks clinical and physiologic stability including applicable weaning attempts prior to transfer; and

(d) As a practical matter, the services cannot be provided in an appropriate alternative setting to meet the medical stability and safety needs of the individual.

(3) Patient status determinations shall be made taking into consideration the following factors as shown in the nursing facility services manual:

(a) Alternative care possibilities;

(b) Goals for patient care;

(c) Primary hypoventilation, restrictive lung, ventilatory muscular dysfunction, and obstructive airway disorders needs which may necessitate mechanical ventilator and related care;

(d) Nonhospital management factors and needs;

(e) Patient treatment characteristics;

(f) Home care potential;

(g) Suitability of transfer to the ventilator care unit;

(h) Provision of an appropriate place of care; and

(i) Other facility admission indicators as shown in the nursing facility services manual.

Section 8. Reserved Bed Days. The department [cabinet] shall cover reserved bed days in accordance with the following specified upper limits and criteria.

(1) Reserved bed days for nursing facilities and nursing facilities with waiver shall be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year. Reserved bed days shall be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the mentally retarded and individuals [persons] with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.

(3) Coverage during an individual's [a recipient's] absence for hospitalization or leave of absence shall be contingent on the following conditions being met:

(a) The individual [person] shall be in Medicaid payment status in

the level of care he/she is authorized to receive and shall have been a resident of the facility at least overnight. Individuals [Persons] for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(b) The individual [person] can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) For leaves of absence other than for hospitalization, the individual's [patient's] physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

~~[Section 8. The provisions of this administrative regulation shall apply to covered services provided on or after July 15, 1994.]~~

Section 9. Material Incorporated by Reference. (1) The "Medicaid Nursing Facility Services Manual", dated July 1, 1996 is incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday from 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 10. Implementation Date. The revisions to this administrative regulation shall be applicable for services provided on or after July 1, 1996.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: October 8, 1996

FILED WITH LRC: October 10, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996 five workdays 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. 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: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: Nursing facilities participating in the Medicaid Program and approximately 20 Medicaid recipients who are ventilator dependent.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: See companion regulation 907 KAR 1:025.

2. Continuing costs or savings: See companion regulation 907 KAR 1:025.

3. Additional factors increasing or decreasing costs: See companion regulation 907 KAR 1:025.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will assure adequate access to medically necessary ventilator nursing facility beds for Medicaid recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

(9) 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation

does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (Amendment)

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

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [~~Human Resources~~] has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the Medicaid Program [~~cabinet~~] for nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. (1) "All other costs" means other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

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

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

(a) Physical, occupational and speech therapy;

(b) Laboratory procedures;

(c) X-ray;

(d) Oxygen and other related oxygen supplies;

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

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

(g) Ventilator therapy services, subject to the coverage limitations shown in the Nursing Facility Reimbursement Manual.

(4) "Basic per diem cost" means for each major cost category (nursing services costs and all other costs) shall be the computed rate arrived at when otherwise allowable costs are trended and

adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Department" means the Department for Medicaid Services or its designee.

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

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

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

(9) ~~(8)~~ "ICF-MRs" means intermediate care facilities for the mentally retarded.

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

(11) ~~(10)~~ "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

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

(13) ~~(12)~~ "Nursing facility (NFs)" means a facility certified to the Medicaid Program by the state survey agency as meeting all nursing facility requirements, and in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare Program. The phrase "nursing facility" also includes a nursing facility with waiver, as provided for in 42 USC 1396r(b)

(4)(C)(ii), unless the context specifies otherwise.

(14) ~~(13)~~ "Nursing facility with a mental retardation specialty (NF-MRS)" means a nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

(15) ~~(14)~~ "Nursing services costs" means the direct costs associated with nursing services.

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

(17) ~~(16)~~ "PRO" means peer review organization.

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

(19) ~~(18)~~ "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include the following:

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

(b) Items which are furnished routinely and relatively uniformly to

all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes shall be allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs; and

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

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

Section 2. Reimbursement for Nursing Facilities, ~~(NFs)~~ ~~(Including Nursing Facilities with Waiver)~~ and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities, ~~(NFs)~~ ~~(including nursing facilities with waiver)~~ or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022~~[-Nursing facility and intermediate care facility for the mentally retarded services]~~.

(3)(a) A nursing facility desiring to participate in Medicaid shall be required to have at least twenty (20) percent of its Medicaid participating beds ~~(but not less than ten (10) beds, [-for] A facility with less than ten (10) beds, shall have all beds)~~ participate in the Medicare Program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds ~~(but not less than ten (10) beds, [-] If the facility has less than ten (10) beds, all beds shall [-] participate in the Medicare Program.~~

(4) The Medicaid Program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which have been determined by the department ~~(cabinet)~~ to be reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards, in accordance with the requirements set forth in 42 USC 1396(a)(13)(A).

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the department ~~(cabinet)~~ and contained in the Kentucky Medicaid Program Nursing Facility Reimbursement Manual~~[-revised July 1, 1995 which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid Program Nursing Facility Reimbursement Manual may be~~

reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of the appropriate fee allowed by 200 KAR 1:020.

Section 4. Implementation of the Payment System. The department's [cabinet's] reimbursement system shall be supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The [cabinet's] reimbursement system shall include the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the department [cabinet] on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section of the administrative regulation, including the provisions contained in subsections (13) and (14) of this section.

(a) Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the department [cabinet].

(b) An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;
2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or
3. Other governmental actions that result in an unforeseen cost increase.

(c)1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b)1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report period cost data has not been audited or desk reviewed prior to rate setting the [with] prospective rates shall be based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed. If desk reviews or audits are completed after May 16, but prior to universal rate setting for the rate year, the desk review or audited data shall be used.

2. ~~[Appropriate cost report adjustments shall be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990.]~~

3. Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports shall subject to adjustment to the audited amount.

(c) Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied.

(d) Facilities whose rates are subject to settlement back to cost will not be included in the arrays until the facilities are no longer

subject to cost settlement.

(e) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

1. Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF-MRs, NF-institutions for mental disease, and NF-pediatric facilities) shall be divided into urban and rural arrays.

a. The urban array shall include all facilities within a standard metropolitan statistical area.

b. The rural array shall include all facilities in nonstandard metropolitan statistical area counties.

c. For purposes of arraying, current multilevel facilities (i.e., NF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey).

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

2. Nursing facility upper limits. The following NF upper limits shall be applied:

a. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable);

b. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities; and

c. The upper limit for NF-MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

3. Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

a. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost;

b. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter;

c. Hospital dual licensed beds shall be paid at the hospital based facility upper limits;

d. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate. A distinct part unit of not less than twenty (20) beds shall be required with a requirement that the facility have a ventilator patient census of at least fifteen (15) patients. The patient census shall be based upon the quarter preceding the beginning of the rate year, or upon the quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a ventilator care unit at the beginning of the rate year. The fixed rate for hospital based facilities shall be \$460 per day, and the fixed rate for freestanding facilities shall be \$250 per day. The rates shall be increased based on the Data Resources, Inc. rate of inflation indicator for the nursing facility services for each rate year beginning with the July 1, 1997 rate year; and [which shall be equal to projected costs; and]

e. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem. Facilities providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facilities' usual and customary charges.

4. Other factors relating to costs and upper limit determination shall be:

a. If the department [eabinet] has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the department [eabinet] shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors shall be to avoid paying the facilities twice for the same costs. If the trending and indexing factors include costs related to a minimum wage increase, the department [eabinet] shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

b. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

c. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

d. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

e. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates.

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

(c) Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department [eabinet] exceeding twenty-five (25) percent of billed charges; or

2. Where an evaluation by the department [eabinet] of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of the indebtedness may include notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except if [when] it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist if [when] an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business. However, an exception to the relationship shall be determined to exist if [when] fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the department [eabinet] shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medicaid Program Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the department [eabinet]. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be [are] allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's

depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Valuation of capital assets.

(a) ~~[No]~~ Increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985 except as shown in subsection (9)(e) of this section with regard to enforceable agreements for a change of ownership entered into prior to July 1, 1984.

(b) For bona fide changes of ownership entered into on or after October 1, 1985 the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1396a(a) (13)(C) and the Reimbursement Manual at pages 350.03 - 350.10 and 352.08-352.09 effective for services provided on or after July 1, 1995.

1. The payment increases resulting from the increases in valuation shall be limited to a projected annual amount of \$3,000,000, taking into account Medicaid occupancy from the prior year Medicaid cost report, with the payments made as an add-on to the usual payment rates and not subject to the usual upper limits. If projected add-on payments would otherwise exceed \$3,000,000 on an annual basis the add-on amounts shall be reduced proportionately for each facility, i.e., the same percentage reduction shall be applied to all facilities qualifying for the rate add-on.

2. Facilities qualifying for the rate add-on shall be those facilities with a bona fide change of ownership on or after October 1, 1985 and before the beginning of the rate year for which the add-on is applicable. For the rate year beginning July 1, 1995, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by not later than September 30, 1995. For subsequent rate years, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by July 31 of the affected rate year.

(11) Each facility shall maintain and make available any records (in a form acceptable to the department ~~[cabinet]~~) which the department ~~[cabinet]~~ may require to justify and document all costs to and services performed by the facility. The department ~~[cabinet]~~ shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Department ~~[Cabinet]~~ approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If ~~[When]~~ a request for prior approval of projections or

expansions is made, absence of a response by the department ~~[cabinet]~~ shall not be construed as approval of the item or expansion.

(13) The department ~~[cabinet]~~ shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made if:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The department ~~[cabinet]~~ may develop and utilize methodology to assure an adequate level of care. Facilities determined by the department ~~[cabinet]~~ to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the department's ~~[cabinet's]~~ concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet.

(a) The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

1. The department ~~[cabinet]~~ may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area.

2. The department ~~[cabinet]~~ may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, institutions for mental diseases, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive.

(a) Facilities qualifying for the cost savings incentive (except for NF-MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array.

(b) The cost savings incentive shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for

each cost array.

(c) NF-MRSs shall qualify for the cost savings incentive if the NF-MRS has costs less than the NF-MRS upper limit, and the cost savings incentive shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. [No] Return for investment risk shall not be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

| Basic Per Diem Cost | Investment Factor Per Diem Amount | Incentive Factor Per Diem Amount |
|------------------------|---|--|
| \$ 96.99 & below | \$1.38 | \$.87 |
| 97.00 -102.99 | 1.29 | \$.75 |
| 103.00 -108.99 | 1.18 | \$.62 |
| 109.00 -114.99 | 1.06 | \$.47 |
| 115.00 -120.99 | .92 | \$.31 |
| 121.00 -126.99 | .76 | \$.13 |
| 127.00 -133.49 | *.53 | ---- |

*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992.

(a) This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system.

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, institutions for mental diseases, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

~~(a) [1- The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high intensity, low intensity, or neither. For patients meeting patient status (high or low intensity), the PRO will then determine the case weight).~~

2-] The average case weight [thereafter] shall be based on all

level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the cost savings incentive adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the cost savings incentive factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency.

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

(24) The provider tax on nursing facilities shall be considered allowable cost; for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this administrative regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual. ~~[; however,]~~ The cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

Section 6. Material Incorporated by Reference. (1) The "Nursing Facility Reimbursement Manual", dated July 1, 1996, shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating in-state provider shall be provided one (1) copy of the manual and appropriate manual updates. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 7. Reimbursement Review and Appeal. Participating facilities may appeal department ~~[cabinet]~~ decisions as to application of the general policies and procedures in accordance with 907 KAR 1:671. ~~Conditions of Medicaid provider participation; enrollment; documentation of services; disclosure, claims processing, withholding overpayments, appeals process, and sanctions.~~

Section 8. ~~[7.]~~ Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1996 ~~[+996]~~.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: October 8, 1996

FILED WITH LRC: October 10, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996 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. 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: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: Nursing facilities participating in the Medicaid Program and approximately (20 Medicaid recipients.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$3,358,000 (costs)

2. Continuing costs or savings: \$3,358,000 (costs)

3. Additional factors increasing or decreasing costs: Number of Medicaid recipients needing ventilator facility beds.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will assure adequate access to medically necessary ventilator nursing facility beds for Medicaid recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of ventilator dependent Medicaid recipients.

(9) 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform

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standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, OCTOBER 15, 1996

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(New Administrative Regulation)

201 KAR 12:200. Requirements for continuing education for renewal of license.

RELATES TO: KRS 317A.050

STATUTORY AUTHORITY: KRS 317A.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: Beginning July 1, 1997, KRS 317A.050(8) requires cosmetologists, cosmetology instructors and nail technicians to provide proof of continuing education for renewal of license as determined by the board by promulgation of an administrative regulation.

Section 1. Sponsors of continuing education programs shall request approval of the board on an "Application for Approval of Continuing Education Program" form. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers, fees to be charged, evaluation form and other pertinent information.

Section 2. Applications for approval of a continuing education program shall be submitted to the office of the board at least ninety (90) days prior to the starting date of the program. The board shall approve or deny the request in writing within sixty (60) days of receipt of the application.

Section 3. The program shall consist of an organized program of learning which:

- (1) Contributes directly to the competency of the licensee;
- (2) Pertains to subjects related to the theory, management and practice of cosmetology and nail technology; and
- (3) Pertains to the health, safety, welfare and protection of the public including but not limited to sanitation, sterilization, chemical waste disposal, safety in the work place, first aid, bloodborne pathogens, airborne pathogens and HIV/AIDS education.

Section 4. All programs shall specify the course objectives, content, prerequisites, requirements and the number of continuing education hours to be earned. The information shall also be specified in all promotional materials.

Section 5. All programs shall be generic product related and shall not be used to promote, sell or advertise any product.

Section 6. Sponsors shall include, but not be limited to:

- (1) Private and vocational technical schools of cosmetology offering cosmetology and nail technician courses.
- (2) Associations and organizations whose membership consists of licensees of the board.
- (3) Colleges, universities and other institutions of higher education recognized by the Kentucky Council on Higher Education.
- (4) Individuals who hold an active cosmetologist license, instructor of cosmetology license or nail technicians license and have special education, training and experience in cosmetology.
- (5) Other persons who have a license, degree, special education, training and experience relating to the subject matter of the program.
- (6) State agency programs.
- (7) Manufacturers and distributor product shows shall not be approved.

Section 7. The board may monitor or review any continuing

education program approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may withdraw approval of the hours granted to the program.

Section 8. The licensee shall have completed a "Record of Attendance for Continuing Education Credit" form. The form shall indicate the program title, name of sponsoring organization or individual, date of the program, number of hours of program, attendees name, address and license number. The record of attendance form must accompany the applicant's renewal application.

Section 9. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Application for Approval of Continuing Education Program"; and

(b) "Record of Attendance".

(2) These forms may be inspected, copied, or obtained at Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chairman

APPROVED BY AGENCY: September 3, 1996

FILED WITH LRC: September 24, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, November 25, 1996, at 10:30 a.m. at the office of the board, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 18, 1996, five workdays 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 the contact person.

CONTACT PERSON: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact person: Carroll Roberts

(1) Type and number of entities affected: 18,000 licensed cosmetologists; 450 cosmetology instructors; and 1,500 nail technicians.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None at this time. However, the board does not anticipate any changes in the cost of living and employment in any area of the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no impact on the cost of doing business by the promulgation of this administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be an increase in reporting and paperwork requirements, increasing costs to the agency the first year. There may be a cost for compliance to the licensee depending on the choice of sponsor. There will not be any effects upon competition.

2. Second and subsequent years: Cost factors will stabilize after the second year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Approximate cost of \$6,000.

2. Continuing costs or savings: Approximate cost of \$3,000.

3. Additional factors increasing or decreasing costs: There would be no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Listing of licensees participating in sponsored groups. Paperwork requirements - completion of a continuing education report form to be attached to the application for renewal.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: License fees.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: There would be no economic impact arising from the administrative regulation in the geographical area on which the administrative regulation will be implemented.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives to provide the necessary information for the protection of the public.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Continuing education would be beneficial to the licensee as well as the citizens of the Commonwealth of Kentucky to assure the licensee stays abreast of the ever changing industry as it relates directly to the competency of the licensee; pertains to subjects related to the theory, management and practice of cosmetology and nail technology; and pertains to the health, safety, welfare and protection of the public including but not limited to sanitation, sterilization, chemical waste disposal, safety in the work place, first aid, bloodborne pathogens, airborne pathogens and HIV/AIDS education.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment. A detrimental effect on public health would be avoided.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which may be in conflict, overlapping, or duplicating.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering was not applied as all instructors of cosmetology must meet the same requirements; all cosmetologists must meet the same requirements appropriate to a cosmetologist; and all nail technicians must meet the same requirements appropriate to a nail technician.

**PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(New Administrative Regulation)**

415 KAR 1:125. Discovery procedure.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(c) requires the Office of the Petroleum Storage Tank Environmental Assurance Fund to hear complaints brought regarding the payment of claims from the fund. This administrative regulation establishes discovery procedures for the hearings provided in 415 KAR 1:120.

Section 1. General Provisions Governing Discovery. (1) Discovery methods. Parties to administrative actions may, upon leave of the hearing officer, obtain discovery by one (1) or more of the following methods:

(a) Depositions upon oral examination or written questions;

(b) Written interrogatories;

(c) Production of documents or things or, for parties other than the agency, permission to enter upon land or other property, for inspection and other purposes; and

(d) Requests for admission.

(2) Scope of discovery.

(a) In general. Parties with leave of the hearing officer may obtain discovery regarding any matter, not privileged or confidential under law or administrative regulation or falling within any evidentiary privilege recognized in the courts of this Commonwealth, whether it relates to a claim or defense of the party seeking discovery or to a claim or defense of any other party, which is relevant to the subject matter involved in the administrative action, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the administrative hearing if the information sought appears reasonably calculated to lead to the discovery of admissible relevant evidence.

(b) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) Hearing preparation: materials.

1. Subject to the provisions of paragraph (d) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this subsection and prepared in anticipation of the administrative action by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

2. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the

person may move for an order of the hearing officer. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Hearing preparations: experts. Discovery of facts known and opinions held by experts, otherwise discoverable under this administrative regulation and acquired or developed in anticipation of or preparation for the administrative action, may be obtained only as follows:

1. A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at the administrative hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the hearing officer may order further discovery by other means, subject to those restrictions as to scope as the hearing officer may deem appropriate.

2. A party may discover facts known or opinions held by an expert who has been retained or employed by another party in anticipation of or preparation for an administrative action and who is not expected to be called as a witness at the administrative hearing, only upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(3) Protective orders.

(a) Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute, and for good cause shown, the hearing officer may make any order which justice requires to protect a person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following:

1. That the discovery not be had;
2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
3. That the discovery may be had only by a method of discovery other than selected by the party seeking discovery;
4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
5. That discovery be conducted with no one present except persons designated by the hearing officer;
6. That a deposition after being sealed be opened only by order of the hearing officer or the secretary; or
7. That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(b) If the motion for a protective order is denied in whole or in part, the hearing officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 10(1)(c) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(4) Sequence and timing of discovery. The hearing officer shall order the methods and sequence of discovery in the order granting discovery, and the fact that a party is granted discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(5) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement that response to include information thereafter acquired, except as follows:

(a) A party is under a duty seasonably to supplement a response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or the

identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(b) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party knows that the response was incorrect when made, or the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the hearing officer, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

Section 2. Persons Before Whom Depositions may be Taken. Depositions shall be taken under oath before a hearing officer, judge, clerk, commissioner or official reporter of a court, a notary public, or before such other persons and under such other circumstances as are authorized by law or ordered by the hearing officer.

Section 3. Stipulations Regarding Discovery Procedure. Unless the hearing officer orders otherwise, the parties may, by agreement, provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and modify the procedures provided by this administrative regulation for other methods of discovery.

Section 4. Depositions upon Oral Examination. (1) When depositions may be taken. After commencement of the administrative action, any party may with leave of the hearing officer take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena issued by the hearing officer.

(2) General requirements.

(a) A party with leave of the hearing officer to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the administrative action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, the matter upon which each person will be examined, and the name or descriptive title and address of the person before whom the deposition is to be taken. If a subpoena is to be served on the person to be examined requiring the production of documents or things, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) The hearing officer may enlarge or shorten the time for taking the deposition.

(c) The hearing officer may order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense.

(d) The notice to a party deponent may be accompanied by a request that the deponent produce documents and tangible things at the deposition. The procedures of the Section 8(2) of this administrative regulation shall apply to any such request for production.

(e) A party may in the notice and subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one (1) or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the

matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in this administrative regulation.

(3) Examination and cross-examination.

(a) Examination and cross-examination of witnesses may proceed as permitted at the administrative hearing. The person before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subsection (2)(c) of this section. If requested by one (1) of the parties, the testimony shall be transcribed at that party's expense.

(b) All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the person taking the deposition upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the person taking the deposition, who shall propound them to the witness and record the answers verbatim.

(4) Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the hearing officer may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 1(3) of this administrative regulation. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the hearing officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 10(1)(c) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(5) Submission to witness. Any party to an action may make a written request before the person taking a deposition therein that it be submitted to the witness. Upon such a request, the transcription of the deposition shall be submitted to the witness for examination and shall be read to or by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person taking the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the person before whom the deposition is taken shall sign it and state on the record the fact of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to exclude the hearing officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(6) Certification and filing by person taking deposition.

(a) The person before whom the deposition is taken shall certify on the deposition that the witness was duly sworn by that person and that the deposition is a true record of the testimony given by the witness.

(b) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party. The

person producing the materials may substitute copies to be marked for identification, if a fair opportunity is afforded all parties to verify the copies by comparison with the originals. If the person producing the materials requests their return, the person before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them. The materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition pending final disposition of the administrative action.

(c) Upon payment of reasonable charges therefor, not to exceed those fixed by law, the person taking the deposition shall furnish a copy of the deposition to any party or to the deponent.

(7) Failure to attend or to serve subpoena; expenses.

(a) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

(b) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the party expects the deposition of that witness to be taken, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

Section 5. Depositions upon Written Questions. (1) Serving questions; notice.

(a) After commencement of the administrative action, any party may, with leave of the hearing officer, take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoenas issued by the hearing officer.

(b) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name or description title and address of the person before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Section 4(2)(e) of this administrative regulation.

(c) The hearing officer may establish an expeditious schedule for the service of cross, redirect, and recross questions.

(2) A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the person designated in the notice, who shall proceed promptly, in the manner provided by Section 4(3), (5) and (6) of this administrative regulation, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions which were received. Neither party agent, or attorney shall be present at the examination of the witness.

Section 6. Use of Depositions in Administrative Hearings. (1) Use of depositions. At the administrative hearing any part or all of a deposition so far as admissible may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing officer finds that:

1. The witness is dead;
2. The party offering the deposition has been unable to procure the attendance of the witness by subpoena;
3. The witness is at a greater distance than 100 miles from the place of the administrative hearing or out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition;
4. The witness is the Governor, the Secretary, Auditor or Treasurer of the state; or the witness is a judge or clerk of a court; or the witness is a postmaster; or the witness is a president, cashier, teller or clerk of a bank; or the witness is a practicing physician, dentist or lawyer; or the witness is a keeper, officer or guard of a penitentiary;
5. The witness is of unsound mind, having been of sound mind when his deposition was taken;
6. The witness is prevented from attending the administrative hearing by illness, infirmity, or imprisonment;
7. The witness is in the military service of the United States or of this state and is not able to attend the administrative hearing to testify; or
8. The hearing officer finds that such circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the administrative hearing, to allow the deposition to be used.

(d) If only a part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(e) Substitution of parties does not affect the right to use depositions previously taken.

(2) Objections to admissibility. Objection may be made at any time during the administrative hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(3) Effect of taking or using depositions. The taking of a deposition or the questioning of a deponent shall not make evidence admissible which is otherwise incompetent or constitute a waiver of objections to its admissibility.

(4) Effect of errors and irregularities.

(a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to disqualification of person before whom deposition is to be taken. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to taking of deposition.

1. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

2. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if

promptly presented, are waived unless timely objection thereto is made at the taking of the deposition.

3. Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within three (3) days after service of the last questions authorized.

(d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person before whom the deposition was taken under this section and Section 5 of this administrative regulation are waived unless a motion to exclude the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Section 7. Interrogatories to Parties. (1) Availability; procedures for use.

(a) With leave of the hearing officer after the administrative action commences, any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers and all related pleadings shall be served upon all parties.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers and objections shall be signed by the person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days of service or within such other time as specified by the hearing officer or agreed upon. The party submitting the interrogatories may move for an order under Section 10(1) of this administrative regulation with respect to any objection to or other failure to answer an interrogatory.

(2) Scope; use at administrative hearing.

(a) Interrogatories may relate to any matters which may be inquired into under Section 1(2) of this administrative regulation, and the answers may be used to the extent permitted by these administrative regulations and KRS Chapter 13B.

(b) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the hearing officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(3) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

(4) Limitation on the number of interrogatories. Unless otherwise allowed by the hearing officer for cause shown, each party may propound a maximum of thirty (30) interrogatories. For purposes of this section, each subpart of an interrogatory shall be counted as a separate interrogatory. The following interrogatories shall not be included in the maximum allowed:

(a) A request for the names and addresses of persons answering the interrogatories;

- (b) A request for the names and addresses of the witnesses; and
- (c) A request as to whether the persons answering are willing to supplement their answers if information subsequently becomes available.

Section 8. Production of Documents and Things. (1) Scope. After commencement of the administrative action, any party may, with leave of the hearing officer, serve on any other party a request to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy any designated documents;

(2) Procedure. The request may be served on any party with leave of the hearing officer after service of the summons. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is made shall serve written response within thirty (30) days or within such other time as specified by the hearing officer or agreed upon by the parties. The party submitting the request may move for an order under Section 10 of this administrative regulation with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(3) Limitation on the number of requests. Unless otherwise allowed by the hearing officer for cause shown, each party may propound a maximum of thirty (30) requests under this section. For purposes of this section, each subpart of a request shall be counted as a separate request.

Section 9. Requests for Admission. (1) Scope. With leave of the hearing officer after the administrative action commences, a party may serve upon any other party a written request for admission, for purposes of the pending administrative action only, of the truth of any matters within the scope of Section 1(2) of this administrative regulation set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(2) Form. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the hearing officer may allow or the parties may agree, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that a reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for the hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) Sufficiency of answers. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objection is justified, the hearing officer shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirements of this section, the hearing officer may order either that the matter is admitted or that an

amended answer be served. The hearing officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference. The provisions of Section 10(3) of this administrative regulation apply to the award of expenses incurred in relation to the motion.

(4) Effect of admission. Any matter admitted under this section is conclusively established unless the hearing officer on motion permits withdrawal or amendment of the admission. The hearing officer may permit withdrawal or amendment when the presentation of the merits of the action will be subverted thereby and the party who obtained the admission fails to satisfy the hearing officer that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. An admission made by a party under this section is for the purpose of the pending administrative action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

(5) Limitation on the number of requests. Unless otherwise allowed by the hearing officer for cause shown, each party may propound a maximum of thirty (30) requests under this section. For purposes of this section, each subpart of a request shall be counted as a separate request.

Section 10. Failure to Make Discovery: Sanctions. (1) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may move the hearing officer for an order compelling discovery as follows:

(a) Motion.

1. If a deponent fails to answer a question propounded or submitted under Section 4 or 5 of this administrative regulation or a corporation or other entity fails to make a designation under Section 4(2)(e) or 5(1)(b) of this administrative regulation, or a party fails to answer an interrogatory submitted under Section 7 of this administrative regulation, or a party fails to allow examination under Section 8 of this administrative regulation, the discovering party may move for an order compelling an answer or a designation or an order compelling examination in accordance with the request. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

2. If the motion is denied in whole or in part, the hearing officer may make such protective order as the hearing officer would have been empowered to make on a motion made pursuant to Section 1(3) of this administrative regulation.

(b) Evasive or incomplete answer. For the purposes of this section an evasive or incomplete answer is to be treated as a failure to answer.

(c) Award of expenses of motion.

1. If the motion is granted the hearing officer shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the hearing officer finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

2. If the motion is denied, the hearing officer shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the hearing officer finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

3. If the motion is granted in part and denied in part, the hearing officer may apportion the reasonable expenses incurred in relation to

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the motion among the parties and persons in a just manner.

(2) Failure to comply with order.

(a) Sanctions by the hearing officer. If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (1) of this section, the hearing officer may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a recommended order by default against the disobedient party.

(b) Expenses on failure to obey order. In lieu of any of the foregoing orders or in addition thereto, the hearing officer shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(3) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 9 of this administrative regulation, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the hearing officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The hearing officer shall make the order unless he finds that the request was held objectionable pursuant to Section 9(1) of this administrative regulation, or the admission sought was of no substantial importance, or the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or there was other good reason for the failure to admit.

(4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.

(a) If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this administrative regulation to testify on behalf of a party fails to appear before the person who is to take his deposition, after being served with a proper notice, or to serve answers or objections to interrogatories submitted under Section 7 of this administrative regulation, after proper service of the interrogatories, or to serve a written response to a request for examination submitted under Section 8 of this administrative regulation, after proper service of the request, the hearing officer on motion may make such orders in regard to the failure as are just, including any action authorized under subsection (2)(a)1, 2, and 3 of this section. In lieu of any order or in addition thereto, the hearing officer may require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(b) The failure to act described in this section may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Section 1(3) of this administrative regulation.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1996 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 19, 1996, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

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

1. First year: The tank owners or operators are financially responsible for \$1,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks. Cost should not rise for the public.

2. Continuing costs or savings: This proposed regulation should not increase cost to the public.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 96 administrative budget was 1.3 million dollars.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund is required to collect, review, maintain, and process hearing files.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) KRS Chapter 13B required creation of this regulation.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The present proposal complies with KRS Chapter 13B.

(5) Geographical and environmental impact.

(a) Geographical: The effect of this regulation will be equal

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through all geographic regions of the state.

(b) Environmental: None

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: KRS Chapter 13B may contain some overlapping provisions, but this regulation is consistent with the statute.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amendments guarantee minimum due process standards.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement. Was tiering applied: No. Tiering was not necessary.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. KRS Chapter 13B.

3. Minimum or uniform standards contained in the federal mandate. None

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.

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. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. If the local government chooses to litigate a final decision of the fund, this provision will affect the litigation.

JUSTICE CABINET Department of State Police (New Administrative Regulation)

503 KAR 6:020. Application for license to carry concealed deadly weapon.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(4) mandates the Department of State Police to promulgate by administrative regulation the form to be completed by applicants for a license to carry a concealed deadly weapon. This administrative regulation establishes the characteristics and elements of the form and procedures for completion of an application form.

Section 1. (1) Application forms shall not be stored in an area accessible to the public.

(2) Except as permitted by Section 10 of this administrative regulation, an application form shall not be removed from the office of the sheriff.

Section 2. An application, Form #52476, shall be identified by a unique number that shall be:

- (1) Expressed on the application form as a bar code that contains the application number;
- (2) Used as the identifying number for the applicant;
- (3) Machine and human readable.

Section 3. A sheriff shall not issue an application form to an applicant or accept an application fee if:

- (1) An applicant does not meet the requirements established by KRS 237.110(2)(a), (b) and (f); or
- (2) The sheriff has verified that an applicant is:
 - (a) Disqualified for licensure pursuant to KRS 237.110(2)(c), (d), (e), (g), (h), and (3); or
 - (b) Subject to a domestic violence order or emergency protective order issued pursuant to KRS Chapter 403; or
- (3) Unless exempted by KRS 237.110(2)(f), an applicant has not submitted the material required by KRS 237.110(5); or
- (4) Verification that an applicant is a resident is not made by:
 - (a) Submission of a valid Kentucky drivers license, or nondriver identification card issued by a circuit court clerk pursuant to KRS 186.410; or
 - (b) Personal knowledge of the sheriff; or
 - (c) Confirmation by another governmental agency; or
- (5) Verification of an applicant's Social Security number is not made by submission of:
 - (a) The applicant's Social Security card; or
 - (b) Governmental agency document that contains an applicant's name and Social Security number; or
- (6) Verification of an applicant's age is not made by submission of:
 - (a) The items specified by subsection (4) of this section; or
 - (b) A birth certificate or other evidence of birth issued by a governmental agency.

Section 4. An applicant who is exempt from the training requirement established by KRS 237.110(2)(f) shall submit documentation establishing that he:

- (1) Was a peace officer on the date of his retirement; and
- (2) Is a member of a retirement system specified by KRS 237.110(2)(f).

Section 5. An applicant shall:

- (1) Complete an application in the presence of the sheriff; and
- (2) Sign the application in the "applicant signature" block of Form

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#52476 in ink.

REGULATORY IMPACT ANALYSIS

Section 6. Application Form. An applicant shall provide the information required by KRS 237.110(4)(a) through (e) on Form #52476.

Section 7. Completion of Form #. The applicant shall:

- (1) Not fold or tear the form;
- (2) Except as provided by Section 5 of this administrative regulation, use a No. 2 pencil to complete the form;
- (3) Not mark or otherwise make an entry in the "Sheriff Use Only" portion;
- (4) Fill each bubble completely; and
- (5) Fill in or enter information, as appropriate, within a column block or bubble.

Section 8. If an applicant fails to follow the instructions for completion of an application, the sheriff shall:

- (1) Destroy the improperly completed application; and
- (2) Require the applicant to complete a new application form.

Section 9. The sheriff shall place the following material in a "single applicant packet" provided by the department:

- (1) The applicant's completed application form;
- (2) A photograph of the applicant complying with the provisions of 503 KAR 6:030;
- (3) A photocopy of the certificate of completion, or notarized affidavit of completion, of the training or safety course or class required by KRS 237.110(2)(f);
- (4) Material provided by an applicant to the sheriff establishing that the applicant is not prohibited from applying or being granted a license pursuant to KRS 237.110(2)(c), (d), (e), (g), and (h).

Section 10. (1) The sheriff shall mail "single applicant packets":

- (a) In a bulk mailer provided by the department;
 - (b) On dates established by the "Mailing Schedule Form".
- (2) The sheriff shall pay the cost of mailing a bulk mailer provided by the department.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Form #52476 (8/13/96)"; and
 - (b) "Mailing Schedule Form (8/13/96)".
- (2) This material may be inspected, copied, or obtained at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 10 a.m. at the Kentucky State Police, Information Services, 1250 Louisville Road, Conference Room, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, 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. Gary Bush, Kentucky State Police, Records Section, 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-8700.

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, will be affected by this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a con-

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cealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

JUSTICE CABINET Department of State Police (New Administrative Regulation)

503 KAR 6:030. Applicant photograph requirements for license to carry concealed deadly weapon.

RELATES TO: KRS 237.110(5)(b)

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(5)(b) mandates the Department of State Police to promulgate by administrative regulation the requirements for the photograph to be submitted by applicants for a license to carry a concealed deadly weapon. This administrative regulation establishes the characteristics and elements of the required photograph.

Section 1. The photograph required by KRS 237.110(5)(b) shall meet the requirements established by the provisions of this administrative regulation.

Section 2. The photograph shall be:

- (1) A color photograph;
- (2) No less than three and one-half (3 1/2) inches by four (4) inches;
- (3) Not exceed four (4) inches by five (5) inches.

Section 3. (1) The photograph shall display the full, front head and facial features of the applicant.

(2) The photograph shall not be a photograph of the applicant wearing sunglasses or attire that obscures a feature of the applicant's face.

(3) The department shall:

(a) Consider an application incomplete if an applicant submits a photograph that it determines obscures a feature of the applicant's face; and

(b) Notify the sheriff who transmitted the application form and the applicant pursuant to the provisions of 503 KAR 6:060.

Section 4. The photograph shall:

(1) Be an original photograph, or a photographic copy developed from the negative of an original photograph;

(2) Not be an image produced by a computer or a copier or other copy equipment or copy machine.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 10 a.m. at the Kentucky State Police, Information Services, 1250 Louisville Road, Conference Room, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, 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 regula-

tion to: Mr. Gary Bush, Kentucky State Police, Records Section, 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-8700.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, will be affected by this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why

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tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

JUSTICE CABINET Department of State Police (New Administrative Regulation)

503 KAR 6:050. Denial of application form and consideration process.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(2), (3) and (10) mandates the Department of State Police to promulgate by administrative regulation the form to be completed by applicants for a license to carry a concealed deadly weapon. This administrative regulation establishes the procedures to be followed by a sheriff for completion and submission of an application form and a review process for persons denied an application form by a sheriff.

Section 1. If a sheriff determines that a person is not eligible to complete an application for a license to carry a concealed deadly weapon pursuant to the provisions of KRS 237.110(2), (3) and (10), and 503 KAR 6:020, he shall:

- (1) Provide the person with a "CCDW Consideration Request Form";
- (2) Request that the person complete section "Citizen Portion" in his presence; and
- (3) Place the completed "CCDW Consideration Request Form" and related material, if applicable, in a "Single Applicant Packet" provided by the department; and
- (4) Transmit the completed "single applicant packet" to the department on the date established by the "Mailing Schedule Form" following completion of the "CCDW Consideration Request Form".

Section 2. A person who has been determined ineligible may attach material establishing that he is qualified to complete an application for a carry concealed deadly weapon license.

Section 3. Within twenty (20) working days of receipt of the "CCDW Consideration Request Form" and related material, if applicable, the department shall:

- (1) Review the "CCDW Consideration Request Form" and related material, if applicable; and
- (2) Notify in writing the person requesting consideration and the sheriff of its determination.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CCDW Consideration Request Form (8/13/96)"; and
- (b) "Mailing Schedule Form (8/13/96)".

(2) This material may be inspected, copied, or obtained at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 10 a.m. at the Kentucky State Police, Information Services, 1250 Louisville Road, Conference Room, Frankfort, Kentucky 40601. Individuals interested

in attending this hearing shall notify this agency in writing by November 14, 1996, 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. Gary Bush, Kentucky State Police, Records Section, 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-8700.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, will be affected by this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

JUSTICE CABINET Department of State Police (New Administrative Regulation)

503 KAR 6:060. Incomplete application for license to carry concealed deadly weapon.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(4) mandates the Department of State Police to promulgate by administrative regulation the form to be completed by applicants for a license to carry a concealed deadly weapon. This administrative regulation establishes the factors that render the form incomplete and procedures for completion of an application form.

Section 1. An application form shall not be considered complete if:

(1) It:

(a) Does not contain the information required by 503 KAR 6:020; or

(b) Contains erroneous information; or

(2) An item of the application form cannot be read or understood.

Section 2. If the department determines that an application form is incomplete pursuant to the provisions of Section 1 of this administrative regulation, the department shall notify the sheriff who transmitted the application form and the applicant on "Missing Information Notice Form" of the:

(1) Reason the application form has been determined to be incomplete; and

(2) The action required to complete the application form.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Missing Information Notice Form (8/13/96)"; and

(2) This material may be inspected, copied, or obtained at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 10 a.m. at the Kentucky State Police, Information Services, 1250 Louisville Road, Conference Room, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by

November 14, 1996, 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. Gary Bush, Kentucky State Police, Records Section, 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-8700.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, will be affected by this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public

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health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

JUSTICE CABINET Department of State Police (New Administrative Regulation)

503 KAR 6:080. Replacement and renewal of license to carry concealed deadly weapon.

RELATES TO: KRS 237.110(4), (8), (9), (11)

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(4), (8), (9) and (11) mandate the Department of State Police to promulgate by administrative regulation the form and procedures for replacement of lost or stolen and changed information of a licensee and renewal of a license to carry a concealed deadly weapon. This administrative regulation establishes the characteristics and elements of the forms and procedures for replacement and renewal of a license.

Section 1. Lost or Stolen License. (1) If a license is lost or stolen, a licensee shall notify the department on "CCDW Request for Lost/Stolen License Replacement Form".

(2) A licensee shall:

(a) Complete the "CCDW Request for Lost/Stolen License Replacement Form" in the presence of the sheriff;

(b) State whether the license has been lost or stolen, and the circumstances relating to the loss or theft;

(c) The date, time, and place, if known, of the loss or theft.

(3) The completed "CCDW Request for Lost/Stolen License Replacement Form" shall be:

(a) Signed by the licensee in the presence of the sheriff; and

(b) Notarized by the sheriff.

(4) The completed "CCDW Request for Lost/Stolen License Replacement Form"; shall be:

(a) Signed by the sheriff; and

(b) Transmitted by the sheriff to the department pursuant to 503 KAR 6:020, Section 10.

(5) Upon approval by the department of the request for a duplicate license, the department shall:

(a) Issue a duplicate license that contains a license number that differs from the license number on the lost or stolen license;

(b) Transmit the duplicate license to the sheriff;

(c) Notify the licensee in writing that the duplicate license may be obtained by the licensee:

1. At the office of the sheriff; and

2. After verification of identity as provided by 503 KAR 6:020, Section 3.

Section 2. Change of Address. (1) If the address of a licensee changes, the licensee shall notify the department of the change of

address on "CCDW Change Of Personal Information Form".

(2) The "CCDW Change Of Address Form" shall be:

(a) Completed and signed by the licensee in the presence of the sheriff; and

(b) Notarized by the sheriff.

(3) The sheriff shall verify the change of address as provided by 503 KAR 6:020, Section 3.

(4) The completed "CCDW Change Of Personal Information Form"; shall be:

(a) Signed by the sheriff; and

(b) Transmitted by the sheriff to the department pursuant to 503 KAR 6:020, Section 10.

Section 3. Notice of Renewal. (1) The department shall transmit a "CCDW Notice of Renewal Form" to a licensee.

(2) The "CCDW Notice of Renewal Form" shall be:

(a) Completed and signed by the licensee in the presence of the sheriff; and

(b) Notarized by the sheriff.

(3) The sheriff shall:

(a) Verify the address of the licensee as provided by 503 KAR 6:020, Section 3;

(b) Sign the completed "CCDW Notice of Renewal Form"; and

(c) Transmitted the completed "CCDW Notice of Renewal Form" to the department pursuant to 503 KAR 6:020.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CCDW Request for Lost/Stolen License Replacement Form (8/13/96)";

(b) "CCDW Change of Personal Information Form (8/13/96)"; and

(c) "CCDW Notice of Renewal Form (8/13/96)".

(2) This material may be inspected, copied, or obtained at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 10 a.m. at the Kentucky State Police, Information Services, 1250 Louisville Road, Conference Room, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, 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. Gary Bush, Kentucky State Police, Records Section, 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-8700.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, will be affected by this regulation.

(2) Direct and indirect costs or savings on the:

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(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

JUSTICE CABINET Department of State Police (New Administrative Regulation)

503 KAR 6:090. License denial and reconsideration process.

RELATES TO: KRS 237.110(2), (4), (6)

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(6) mandates the Department of State Police deny a license to carry a concealed deadly weapon if the applicant fails to qualify under criteria as specified in KRS 237.110(2), (3) and (10). This administrative regulation establishes the procedures for reconsideration when a license is denied by the Department of State Police.

Section 1. If the department determines that it shall deny a license because the applicant fails to meet those specific criteria as specified in KRS 237.110(2)(a), (b), (c), (d), (e), (f), (g), (h), (3) and (10), the department shall notify the applicant and sheriff on a "Notice of Denial Form" of the:

(1) Reason the license is denied; and

(2) The applicant may request reconsideration by the department by a specific date completing the Section "Request for Reconsideration" of the "Notice of Denial Form" in the presence of the sheriff.

Section 2. If the applicant completes the section "Request for Reconsideration" of the "Notice of Denial Form" a sheriff shall:

(1) Place the completed "Notice of Denial Form" and related material, if applicable, in a "single applicant packet" provided by the department; and

(2) Transmit the completed "single applicant packet" to the department on the date established by the "Mailing Schedule Form".

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Denial Form"; and

(b) "Mailing Schedule Form (8/13/96)".

(2) This material may be inspected, copied, or obtained at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 10 a.m. at the Kentucky State Police, Information Services, 1250 Louisville Road, Conference Room, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, 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. Gary Bush, Kentucky State Police, Records Section, 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-8700.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law

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enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, will be affected by this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police start-up cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium. Agency General Fund monies for start-up costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

JUSTICE CABINET Department of State Police (New Administrative Regulation)

503 KAR 6:110. License revocation notice and reinstatement process.

RELATES TO: KRS 237.110(10)

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(10)

mandates the Department of State Police to revoke a license to carry a concealed firearm or other deadly weapon if the licensee fails to meet criteria in KRS 237.110(2) and (3). This administrative regulation establishes the procedures for the revocation by the department of an issued license to carry a concealed deadly weapon and the reinstatement of a revoked license.

Section 1. If the department determines that it shall revoke a license because the licensee fails to meet those criteria specified in KRS 237.110(2) and (3), the department shall notify the licensee and sheriff on a "Notice of Revocation Form" of the:

(1) Reason for the revocation; and

(2) Date of revocation; and

(3) The licensee may request reconsideration of the revocation by the department by a specific date by completing the Section "Request for Reconsideration" of the "Notice of Revocation Form" in the presence of the sheriff.

Section 2. If the licensee completes the section "Request for Reconsideration" of the "Notice of Revocation Form" a sheriff shall:

(1) Place the completed "Notice of Revocation Form" and related material, if applicable, in a "single applicant packet" provided by the department; and

(2) Transmit the completed "single applicant packet" to the department on the date established by the "Mailing Schedule Form".

Section 3. License Revocation Not to Change Expiration Date. In instances of license revocation, the date of expiration shall not be extended to accommodate the time of revocation.

Section 4. License Reinstatement. Upon receipt of an order from the appropriate court to terminate the revocation or upon successful reconsideration by the Department of State Police, the license shall be reinstated into the LINK System by the Department of State Police and the applicant and sheriff shall be so notified.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Revocation Form"; and

(b) "Mailing Schedule Form (8/13/96)".

(2) This material may be inspected, copied, or obtained at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 10 a.m. at the Kentucky State Police, Information Services, 1250 Louisville Road, Conference Room, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, 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

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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. Gary Bush, Kentucky State Police, Records Section, 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-8700.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary L. Bush

(1) Type and number of entities affected: 7120 local and state law enforcement officers, 2139 civilian personnel that support the law enforcement effort in this Commonwealth and, that as yet unknown number of citizens that will make application for a license to carry a concealed firearm or other deadly weapon, will be affected by this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,583,200

2. Continuing costs or savings: \$932,200

3. Additional factors increasing or decreasing costs: In order for Department of State Police startup cost to be recovered, a total of 75,000 applicants must be received during the initial program year.

(b) Reporting and paperwork requirements: Design of the application form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Department of State Police.

(4) Assessment of anticipated effect on state and local revenues: The Sheriff of the county of jurisdiction will receive \$20 of the \$60 fee for each application processed.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994 - 1996 biennium. Agency General Fund monies for startup costs, replaced by funds received from the application fees if applicants exceed 75,000. If applications for the initial year fall short of 75,000, agency funds will be used to supplement the shortfall.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals aspiring to obtain a license to carry a concealed firearm or deadly weapon. Provisions contained in this regulation provide avenues by which the applicant may appeal actions of the Department of State Police or the sheriff of jurisdiction.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of the Commissioner of Education

(New Administrative Regulation)

701 KAR 5:065. Repeal of 701 KAR 5:060, Code of ethics for state testing program.

RELATES TO: KRS 158.650 to 158.750

STATUTORY AUTHORITY: KRS 156.070, 158.670

NECESSITY, FUNCTION, AND CONFORMITY: The administrative regulation being repealed was utilized with the state testing program in effect prior to 1990. 701 KAR 5:060 is no longer used and is being superseded by 703 KAR 4:110, Code of ethics for state required testing.

Section 1. 701 KAR 5:060, Code of ethics for state testing program, is hereby repealed.

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

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

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

(a) Cost of living and employment in the geographical area in

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which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation is being repealed.

EDUCATION, ARTS, AND HUMANITIES CABINET

Department of Education

Office of District Support Services (New Administrative Regulation)

702 KAR 4:150. Procedures for approving energy conservation projects.

RELATES TO: KRS 45A.345A to 45A.460, 58.600 to 58.615, 156.070

STATUTORY AUTHORITY: KRS 58.615

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.351 establishes as the policy of the Commonwealth the preservation of natural resources by maximizing energy efficiency measures in the construction, renovation and maintenance of public building. KRS 45A.351 also encourages local public agencies to incorporate cost-effective energy efficiency measures into their buildings. KRS 58.615 requires the Department of Education to promulgate administrative regulations to establish procedures for local school districts for conducting and approving energy audits and cost-benefit analyses for energy conservation projects.

Section 1. Local school districts shall submit energy audits and cost-benefit analyses for energy conservation project proposals above \$100,000, if financed with energy conservation revenue bonds, to the Department of Education, Bureau of Management Support Services. Energy audits and cost-benefit analyses shall meet requirements set forth in North America Energy Measurement and Verification Protocol (NEMVP).

Section 2. Registered architects, engineers, and construction managers and qualified providers that conduct energy audits and design energy conservation measures for energy savings for educational facilities shall be selected by a request for proposal process in accordance with 702 KAR 4:160. The request for proposal shall include the following information:

(1) The name and address of the local school district;

(2) The name, address, title, and phone number of a contact person;

(3) Notice indicating that the local school district is requesting qualified providers to propose energy efficiency measures through a guaranteed energy saving contract;

(4) The evaluation criteria for assessing the proposals;

(5) The date, time, and place where proposals shall be received; and

(6) Any other stipulations and clarifications the local school district may require.

Section 3. Energy construction measures for educational facilities shall be bid pursuant to KRS Chapter 45A, 162.070, and 702 KAR 4:160 upon approval by the chief state school officer. All processes of energy savings contracts shall comply with 702 KAR 4:160 including:

(1) Project submittals;

(2) Design review and approvals;

(3) Design and construction contract approvals;

(4) Performance bonds;

(5) Bidding of energy construction measures;

(6) Change orders; and

(7) Contract administration.

Section 4. The certified energy provider shall provide a sufficient performance and payment bond to the local school district to cover the savings guaranteed in the energy savings contract pursuant to 702 KAR 4:160. Certified energy providers may prequalify contractors for energy savings measures to ensure performance required under the energy savings guaranty. Prequalification criteria for materials and labor shall follow requirements specified in 702 KAR 4:160.

Section 5. The North American Energy Measurement and Verification Protocol document, dated March 1996, is incorporated herein by reference and may be copied and inspected at the Division of Facilities Management, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five (5) work days

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prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Thomas L. Willis

(1) Type and number of entities affected: All certified personnel in the 176 school districts of the Commonwealth.

(2) Direct and indirect costs or savings on the: Potential savings in utility costs for school districts.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects on the competition) for the:

1. First year following implementation: Same requirements stated in 702 KAR 4:160.

2. Second and subsequent years: Same requirements stated in 702 KAR 4:160.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Same requirements stated in 702 KAR 4:160.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation:

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: Potential savings for local school districts in utility costs.

(a) Geographical area in which administrative regulation will be implemented: 176 local school districts.

(b) Kentucky: 176 local school districts.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation assists school districts in identifying ways to improve the infrastructure of their buildings.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This regulation facilitates the process of identifying improvements to the infrastructure of the buildings.

(c) If detrimental effect would occur, explain detrimental effect: Without the regulation, improvements to school buildings may not occur, affecting the welfare of school children.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: KRS 45A.351

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. The regulation applies equally to all local school districts.

EDUCATION, ARTS AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Division of Finance

(New Administrative Regulation)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.035, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) program; KRS 157.360 bases SEEK funding upon average daily attendance; KRS 158.030 and 158.100 define the age for compulsory school attendance; KRS 158.060 defines the school day and month and make-up of school days missed; KRS 158.070 defines the school term; KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities; KRS 161.200 requires attendance records to be kept by teachers. The purpose of this administrative regulation is to insure uniformity in recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar prior to May 15 of each year. The calendar shall establish the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days and days on which schools shall be dismissed.

(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.

(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include hours equal to the greatest number of hours missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

(6) Lack of compliance with minimum school term requirements shall result in a proportional reduction of funding under the Support Education Excellence in Kentucky (SEEK) program, pursuant to KRS 157.350(2).

Section 2. (1) The local board of education shall file the adopted school calendar with the Department of Education prior to June 1 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

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(3) An amended school calendar shall be submitted for approval to the Department of Education prior to May 1 of each year. Subsequent amendments to the school calendar shall be submitted to the Department of Education no later than five (5) calendar days after the meeting of the local board of education at which the amendment is approved.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year which do not have to be made up, which occurred as a result of school days shortened due to emergency.

(3) Except for the provisions of subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

(2) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

(3) A local board of education request for disaster days when one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. (1) The following shall constitute the only activities to be conducted during the instructional school day:

(a) Courses and activities included in the "Program of Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;

(b) Courses not included in the "Program of Studies for Kentucky Schools, Grades Primary-12", which have been approved for the current school year by the Commissioner of Education pursuant to 704 KAR 10:050;

(c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between each class, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a schedule that delineates instructional time periods and noninstructional time periods.

Section 6. (1) Daily attendance of pupils in elementary schools shall be determined by checking their attendance a minimum of one (1) time in the morning, one (1) time in the afternoon and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by checking their attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student

name, grade, time of late arrival, time of early departure, parent or legal guardian signature and any other information which may be required by the local board of education.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a cocurricular instructional activity which has been authorized by the local board of education and is a definite part of the instructional program of the school; or

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035.

(5) Even if a pupil's absence is due to factors beyond the pupil's control, such as inclement weather or failure of the transportation system to operate, the pupil shall be counted absent.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 7. (1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of instructional time in the regularly scheduled school day for his grade level.

(2) A tardy shall be recorded for a pupil who is absent one (1) to thirty-four (34) percent of instructional time in the regularly scheduled school day for his grade level.

(3) One-half (1/2) day of attendance shall be recorded for a pupil who is absent thirty-five (35) to eighty-four (84) percent of instructional time in the regularly scheduled school day for his grade level.

(4) A full-day absence shall be recorded for a pupil who is absent eighty-five (85) to 100 percent of instructional time in the regularly scheduled school day for his grade level.

(5) The percentages described in this section apply to the regularly scheduled instructional day approved by the local board of education and is applicable to entry level through grade level twelve (12).

Section 8. A local board of education may permit released time as an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. Released time shall not be included in calculating the district's average daily attendance.

Section 9. A local board of education may permit shared time as an arrangement in which a pupil concurrently attends a public common school part time and a nonpublic school part time pursuing part of his education under the direction and control of the public common school and part of his education under the direction and control of the nonpublic school. The time the student is served by the public school district shall be included in calculating the district's average daily attendance.

Section 10. If a local school district, under the provisions of KRS 157.360(6), enrolls a child with disabilities in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month. The attendance shall be counted in the public school the child would otherwise attend in the district of residence.

Section 11. (1) If a local school district enrolls a pupil in the entry level program that will not be five (5) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average

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daily attendance.

(3) If a local school district enrolls a pupil that is at least twenty-one (21) years of age, the aggregate days attendance for the pupil upon age twenty-one (21) and following shall not be included in calculating the district's average daily attendance.

Section 12. The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education prior to November 1 of each year.

Section 13. (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the Department of Education prior to November 1 of each year. The written agreement shall include the names of nonresident pupils enrolled in the district covered by the agreement.

(2) Changes may be made to the original nonresident pupil agreement up to the close of the school year to include only the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education with the local Superintendent's Annual Attendance Report prior to June 30 of each year.

Section 14. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, and student entry and exit logs shall be the original source of attendance data for all pupils enrolled in the public common schools.

(2) The school's records of daily attendance and teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years.

Section 15. The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W6, W7, W10, W13, W14, W16 or W18 during the previous school year;

(4) R01 - A pupil received from another homeroom in the same school;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R03 - A pupil received from a nonpublic school in the same public school district;

(7) R04 - A pupil received from a public school in Kentucky outside this public school district;

(8) R05 - A pupil received from a nonpublic school in Kentucky outside this public school district;

(9) R06 - A pupil reentering the school after withdrawal, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(10) R07 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E1, E2 or E3;

(11) W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W1 shall be R1.

(12) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W2 shall be R2;

(13) W03 - A pupil transferred to a nonpublic school in this public

school district. The reentry code to use with W3 shall be R3;

(14) W04 - A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W4 shall be R4, R5 or R7;

(15) W05 - A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W5 shall be R4, R5 or R7;

(16) W06 - A pupil who is sixteen (16), but not yet eighteen (18) years of age, has completed the required sixty (60) day waiting period pursuant to KRS 159.010 and has withdrawn. The reentry code to use with W6 shall be R6;

(17) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 1(1), accompanied by a doctor's statement certifying the condition, or any other health related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, accompanied by a doctor's statement certifying the condition. The reentry code to use with W7 shall be R6;

(18) W08 - A pupil withdrawn due to death;

(19) W09 - A pupil graduated prior to the end of the school term or year;

(20) W10 - A pupil discharged for the balance of the school term or year. The reentry code to use with W10 shall be R6 if withdrawn for the balance of the school term;

(21) W12 - A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R6. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(22) W13 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W6, W7, W10, W13, W14, W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R6;

(23) W14 - A pupil withdrawn after having given birth to, and in the process of, parenting a child. The reentry code to use with W14 shall be R6;

(24) W16 - A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;

(25) W17 - An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060; and

(26) W18 - A pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be R6.

Section 16. The following ethnic codes shall be used to indicate the ethnic origin of pupils:

(1) 1 - White (not Hispanic) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(2) 2 - Black (not Hispanic) - A person having origins in any of the black racial groups of Africa;

(3) 3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;

(4) 4 - Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(5) 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and

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(6) 6 - Other.

Section 17. The request for records and other information involving the transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170. The local board of education shall adopt a form or process to comply with the requirements of KRS 159.170.

Section 18. The "Growth Factor Report" file layout, dated July 1, 1996, and the "Superintendent's Annual Attendance Report" file layout, dated July 1, 1996, are incorporated herein by reference and may be obtained, copied and inspected at the Division of Finance, Attendance and Data Collection Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: 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:

(10) Any additional information or comments: None

(11) 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.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Bureau of Learning Results Services

(New Administrative Regulation)

703 KAR 4:110. Code of ethics for state required testing.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 gives the Kentucky Board of Education the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and districts. This administrative regulation establishes a Code of Ethics for appropriate testing practices for state required tests.

Section 1. The "Code of Ethics for Appropriate Testing Practices for School and District Personnel", dated August, 1996, is hereby adopted and incorporated by reference, and may be inspected and copied at the Department of Education, Office of Curriculum, Assessment, and Accountability, 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

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

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 10, 1996

FILED WITH LRC: October 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall

notify this agency in writing by November 15, 1996, five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, telephone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or savings to those affected:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None
 1. First year following implementation: None
 2. Second and subsequent years: None
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: None
 - (4) Assessment of anticipated effect on state and local revenues: None
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A
 - (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (7) Assessment of alternative methods; methods why alternatives were rejected: N/A
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: N/A
 - (c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
 - (10) Any additional information or comments: None
 - (11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 176 local school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (New Administrative Regulation)

704 KAR 20:475. Probationary certificate for teachers of technology education.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Pursuant to KRS 161.028, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures adopted by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of technology education. This administrative regulation is not required by federal law.

Section 1. Definition "Qualified technology education teacher" means a teacher who holds certification as a technology education teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for Probationary Certificate in Technology Education. If a qualified teacher is not available for the position of technology education teacher as attested by the local superintendent, the superintendent may request that a one (1) year probationary certificate be issued for a specific technology education offering as approved by the Division of Secondary Vocational Education to a teacher who meets the following requirements:

(1) Holds a valid classroom teaching certificate for teaching in the middle school or secondary school.

(2) Has enrolled in a preparation program which shall lead to full certification in technology education. This program shall be developed with a technology education teacher trainer and a program consultant representing the Division of Secondary Vocational Education and shall include a personal professional development plan.

(3) Has completed twelve (12) clock hours of training, as required and verified by the Division of Secondary Vocational Education, on student safety in activities associated with the specific technology education offering for which application is being made.

Section 3. Requirements for Renewal of Probationary Certificate in Technology Education. (1) The applicant shall complete six (6) clock hours of orientation and management training provided by the Division of Secondary Vocational Education no later than the first six (6) weeks of employment.

(2) The applicant shall complete six (6) semester hours from the professional development plan within the first semester of the technology education teaching assignment.

(3) The first one (1) year renewal of the probationary certificate shall require twelve (12) semester hours from the professional development plan to be completed by September 1 of the year of expiration.

(4) Each subsequent one (1) year renewal shall require an additional six (6) semester hours from the professional development plan to be completed by September 1 of the year of expiration.

Section 4. Requirements for Extending the Probationary Certificate. The probationary certificate may be extended to include additional technology education offerings upon recommendation by the Division of Secondary Vocational Education and the technology education teacher trainer.

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ROSA WEAVER, Chair

APPROVED BY AGENCY: September 23, 1996

FILED WITH LRC: September 26, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 22, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by, November 15, 1996, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Dr. Betty Lindsey, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Phone: (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Betty Lindsey

(1) Type and number of entities affected: All candidates for the Probationary Certificate for Teachers of Technology Education.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Candidates will be required to file appropriate applications, complete all requirements for renewal, and local districts will maintain appropriate records. The Division of Secondary Vocational Education will provide training related to student safety and assist the candidate in developing planned coursework that will lead to full certification.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body: The Division of Certification will review applications, issue or deny certificates, maintain records for all transactions. Local districts will maintain appropriate documentation. The Division of Secondary Vocational Education staff will provide assistance to the candidate for this probationary certificate.

(a) Direct and indirect costs or savings:

1. First year: Costs associated with the dissemination of program requirements, issuing certificates, staff assistance to the candidate, and maintenance of records.

2. Continuing costs or savings: Continuing costs to be the same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Office of Teacher Education and Certification must monitor program standards, issue certificates, and maintain records. Local districts and the Division of Secondary Vocational Education must maintain reports and records.

(4) Assessment of anticipated effect on state and local revenues: No additional costs above the budgeted amount for The Office of Teacher Education and Certification.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund.

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Qualified instructional personnel are required for the instruction of public school students.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: No adverse effects.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No, certification requirements are uniformly applicable to all individuals.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (New Administrative Regulation)

704 KAR 20:695. Standards for accreditation of teacher education.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that teacher education institutions be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that certificates shall be issued to persons who have completed programs approved by the Education Professional Standards Board. This administrative regulation establishes the standards for accreditation of teacher education.

Section 1. Definitions. (1) "AACTE" means the American Association of Colleges for Teacher Education.

(2) "EPSB" means the Education Professional Standards Board with the authority and responsibility as defined in KRS 161.028.

(3) "NCATE" means the National Council for Accreditation of Teacher Education.

Section 2. Official Communication. (1) The EPSB shall be responsible for annual communications by August 1 with each teacher education institution to update the accreditation status of the institution's unit for teacher education and of the program approval status for the programs to prepare school personnel at the institution.

(2) Official communications shall be directed to the official designated by the institution as the head of the teacher education unit with copies going to the president and to the chief academic officer. The head of the respective teacher education units shall disseminate the information to the respective and appropriate administrative units of the institution - colleges, schools, departments, and offices.

(3) The EPSB shall coordinate dates for national and state accreditation visits.

Section 3. (1) Both the teacher education governance unit of the

institution and the EPSB shall be responsible for regular communication and liaison with respect to the administrative regulations relating to teacher preparation. In particular, the teacher education institution shall report progress and status by means of an annual report described in Section 5 of this administrative regulation. In its response to the annual report, the EPSB shall summarize the status of the institution with respect to approved programs and with respect to the calendar of events leading up to the next scheduled on-campus evaluation. Within the teacher education institution the governance unit for teacher education shall be responsible for keeping up with the calendar of events for accreditation and program approval and for the preparation of institutional information so that it will be ready by the dates described in this administrative regulation.

(2) Approximately six (6) months prior to their scheduled accreditation visit, institutions seeking NCATE accreditation shall announce the upcoming visit to their local and state publics. The EPSB shall annually place a two (2) year schedule of Board of Examiner visits in the board minutes for all Kentucky institutions.

Section 4. Annual Reports. Each institution shall report annually to the EPSB regarding data and information about faculty and students in each of its approved programs, progress made in addressing weaknesses identified by its last accreditation evaluation, and major program developments in each of the NCATE categories of standards. NCATE-accredited institutions may use the annual report sent to NCATE/AACTE as the annual report to the EPSB. Non-NCATE institutions shall use the EPSB Annual Report Form, dated 1996.

Section 5. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups of the EPSB. The Reading Committee shall conduct a preliminary review process by which the materials received from teacher education institutions shall be analyzed with respect to their adequacy, timeliness, and conformity with the corresponding standards.

(2) In the spring and fall semesters of each year, the Reading Committee shall analyze the preconditions reports for initial accreditation visits and the program descriptions (folios) of all the state-only institutional reports submitted by that date.

(3) For institutions seeking initial accreditation by NCATE, the analysis of the institutional report on preconditions for initial accreditation shall be made by NCATE, but shall be available to the EPSB for informational purposes.

(4) For NCATE institutions, the Reading Committee shall analyze the folios, matrices, and any available reports from specialty area groups. Since the preconditions section will be analyzed by NCATE, the Reading Committee shall review that section for information purposes and shall adopt the NCATE analysis. The Reading Committee shall analyze the reports to determine conformity with standards for the preconditions, program standards, and the guidelines of professional associations.

(5) The Reading Committee may:

(a) Ask that the staff of the EPSB resolve any discrepancies or omissions in the reports with the institution.

(b) Refer unresolved discrepancies or omissions to the visiting team for resolution.

(c) Recommend to the EPSB that the evaluation and approval process be terminated, as a result of severe deficiencies in the report.

(6) When the EPSB terminates the evaluation and approval process at this point, the institution may be given a one (1) year extension of state program approval.

(a) At the end of that year, if the preconditions report and the program folios are still not submitted in acceptable form, a denial of approval recommendation shall be made by the Reading Committee for transmission to the EPSB.

(b) If the institutional reports are submitted in acceptable form, the institution shall report on standards for unit accreditation.

(c) An on-site visit shall occur.

(d) If the outcome of the visit is a team recommendation for approval with stipulations, the institution shall then be into its second year of extension.

Section 6. Preconditions for Initial Unit Accreditation. (1) Eighteen (18) months prior to the scheduled campus visit of the evaluation team, the teacher education institution shall submit information to the EPSB documenting the fulfillment of the preconditions for the accreditation of the teacher education unit, as described below.

(2) As a precondition for experiencing an on-campus evaluation for teacher education, the institution shall present documentation to show that the following conditions are satisfied.

(a) Precondition Number 1. There is a written description of the professional education unit that is primarily responsible for the preparation of teachers and other professional education personnel. Required documentation shall include:

1. Verification by an appropriate central administration officer of the unit with primary responsibility for professional education and a statement of the unit's authority.

2. Chart depicting all programs for the preparation of school personnel in the institution, indicating the unit in which each is administratively located (e.g., school of education, school of music, school of arts and sciences), and the administrative unit's relationship to the professional education unit.

3. Program summary that includes the number of graduates by program and level.

4. Unit statement of mission, purpose, or goals.

5. Summary of meetings and actions of the professional education unit for the preceding year (maximum of two (2) pages).

(b) Precondition Number 2. A dean, director, or chair is officially designated to represent the unit and assigned the authority and responsibility for its overall administration and operation. Required documentation shall include:

1. Job description for dean, director, or chair.

2. Chart depicting administrative and organizational structure of the unit.

(c) Precondition Number 3. There are written policies and procedures upon which the operations of the unit rest. Required documentation shall include codified policies and operating procedures of the unit, such as policy manual or constitution and bylaws.

(d) Precondition Number 4. The unit regularly monitors and evaluates, both internally and externally, its operation, scope, quality of its offerings, and the effectiveness of its graduates. Required documentation shall include:

1. Policies for conducting ongoing evaluation reviews.

2. Summary of the findings of evaluation reports completed within the past five (5) years documenting internal programs review (maximum of two (2) pages).

3. Summary of the findings of evaluation reports completed in the past three (3) years documenting external program review, including follow-up study of graduates and employers (maximum of two (2) pages).

4. Summary of recent program modifications based on evaluation results (maximum of (2) two pages).

(e) Precondition Number 5. The unit has criteria for admission to basic teacher education programs that include an assessment of basic skills. Required documentation shall include:

1. List of basic skills that are assessed and the measures used to assess them.

2. Published criteria for admission to professional education programs.

3. Summary of report of assessment results for students admitted for at least the past three (3) years (maximum of two (2) pages).

(f) Precondition Number 6. The unit assesses the academic and professional competencies of education students at exit from all programs at all levels, through multiple evaluation methods. Required

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documentation shall include:

1. Listing of multiple assessment measures used to evaluate academic and professional competence of professional education graduates.

2. Summary of reports of competency assessment outcomes for at least the past three (3) years.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency. Required documentation shall include copies of the most recent approval letter(s) from the EPSB attesting that state standards have been met.

(h) Precondition Number 8. The institution is fully accredited by the appropriate institutional accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation and the United States Department of Education. Required documentation shall include a copy of the latest accreditation letter from the institutional accrediting agency showing that there is reasonable assurance of the overall quality of the institution in the general areas of finance, administration, facilities, student personnel, faculty, and instruction.

(i) Precondition Number 9. The institution is an equal opportunity employer and does not discriminate on the basis of race, sex, color, religion, age, or handicap, consistent with Section 702 of Title VII of the Civil Rights Act of 1964. Required documentation shall include a copy of the institution's official action pledging compliance with nondiscriminatory law and practice.

(j) Precondition Number 10. Courses offered in off-campus settings shall be comparable in faculty, facilities, resources, and requirements to similar courses on campus. The institution shall provide the same evidence of quality to show that standards are met by preparing and submitting an additional narrative describing how off-campus/extended campus courses and programs meet the standards. Required documentation shall include:

1. Faculty vitae.

2. Documents showing provisions made for classrooms, library facilities, advising, student evaluation of courses, programs, and instructors.

3. Continuous assessment results and actions taken.

4. Course syllabi.

5. Student contracts.

Section 7. Institutional Report. (1) For an initial accreditation visit, the teacher education institution shall submit a written narrative two (2) months prior to the scheduled campus visit of the evaluation team to show how the standards are being met for unit accreditation. The written narrative may be supplemented by charts, graphs, diagrams, tables, or other similar means of presenting information.

(2) For a continuing accreditation visit, the written narrative submitted two (2) months prior to the scheduled campus visit of the evaluation team shall be no more than twenty-five (25) pages and shall address changes that have occurred since the last accreditation visit. The narrative shall describe how changes relate to the standards for unit accreditation and to results of the continuous assessment process, including program evaluation. Preconditions information is not required for continuing accreditation visits.

Section 8. Descriptions (folios). Eighteen (18) months in advance of the scheduled on-campus evaluation visit, the teacher education institution shall prepare and submit for each separate program of teacher preparation for which the institution is seeking approval a concise description which shall provide the following information for each program:

(1) Unit's conceptual framework for the preparation of school personnel, followed by the program's conceptual framework, showing its congruence with the unit's framework.

(2) Program experiences: relationship among the program's courses and experiences, learned society guidelines, and state performance standards as established in 704 KAR 20:670.

(3) Assessment: how the program implements ongoing assess-

ment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline(s), and state performance standards as established in 704 KAR 20:670.

(4) Faculty: list of faculty responsible for and involved with the conduct of the specific program, along with their highest degree and responsibilities for the program.

(5) Curriculum guide sheet or contract provided to each student before or at the time of admittance to the program.

Section 9. Board of Examiners; Formation of Evaluation Teams; Evaluation Procedures. (1)(a) The EPSB shall select and appoint a team of evaluators giving consideration to the number and type of programs offered by the institution. Ordinarily, team appointments shall be made at the beginning of the academic year for all of the scheduled evaluation visits; however, replacements shall be made as needed.

(b) A board of examiners shall be recruited and appointed by the EPSB to include at least thirty-six (36) members representing the following constituencies:

1. Kentucky Education Association, at least ten (10) members.

2. Kentucky Association of Colleges for Teacher Education, at least ten (10) members.

3. Other groups, at least ten (10) members nominated by as many of the following groups as possible:

a. Kentucky Association of School Administrators;

b. Persons holding positions in occupational education;

c. Kentucky Branch National Congress of Parents and Teachers;

d. Kentucky School Boards Association;

e. Association of School Councils;

f. State Board of Education;

g. Kentucky affiliations of national learned societies and professional groups;

h. Prichard Committee; and

i. Subject area specialists in the Kentucky Department of Education.

(2) Based upon need, additional members to the Board of Examiners may be appointed by the EPSB.

(3) Appointments shall be for a period of four (4) years. Members may serve additional terms if renominated and reappointed in the manner prescribed for membership. Vacancies shall be filled by the EPSB as they occur.

(4) All members of the Board of Examiners and the staff members of the EPSB responsible for teacher education and approval of teacher education programs shall be trained by NCATE or trained in an NCATE- approved state program.

(5) The three (3) groups shall be given the opportunity to have parity in their representation on evaluation teams.

(6) For institutions seeking NCATE approval, the EPSB and NCATE will arrange for a single team to be chaired by an NCATE-appointed team member. The team shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state - 6 and 5, 5 and 4, 4 and 3, 3 and 2. The size of the team shall depend upon the size of the institution and the number of programs to be evaluated.

(7) The evaluation team chairperson and the team members for institutions seeking state accreditation only shall be selected and recruited by the EPSB from a pool of trained teacher educators, practitioners, and other education-related professional people referred to as the Board of Examiners.

(8) For the first visit under this administrative regulation, the state team shall normally have four (4) to six (6) members. For continuing accreditation reviews every five (5) years, the state team shall normally have two (2) to five (5) members. Arrangements shall be made for the release time of team members from their places of employment by the EPSB.

Section 10. Previsit to the Institution. No later than one (1) month

prior to the scheduled on-campus evaluation visit, the EPSB shall conduct a staff visit to the institution to make a final review of the arrangements. For NCATE-accredited institutions, the previsit shall be coordinated with the NCATE previsit.

Section 11. On-campus Evaluation Visit. (1) At least one (1) staff member of the EPSB shall be assigned as support staff and liaison during the evaluation visit.

(2) The EPSB shall reimburse state team members for travel, lodging, and meals in accordance with the state travel administrative regulations. Team members representing NCATE shall be reimbursed by the teacher education institution in keeping with the NCATE guidelines.

(3) The function of the evaluation team shall be to conduct an on-campus evaluation of the self-study materials prepared by the institution, and to seek out additional information, as needed, to make a determination as to whether the standards are met for the accreditation of the institution's teacher education unit and for the approval of individual teacher preparation programs. The evaluation team shall make use of the analyses prepared through the preliminary review process.

(4) The evaluation team shall also visit off-campus sites where the institution offers courses. Off-campus sites which offer self-standing programs shall require a full team visit. If additional team time is required for visiting off-campus sites, the team chair, the institution, and the EPSB shall negotiate special arrangements.

(5) In joint teams, all team members shall vote on all accreditation and program approval decisions.

(6) The on-site evaluation process shall end with the team chair giving an oral summary of the team's findings. Since the institution shall respond in writing to the team's written report, there shall be no discussion at the time of the exit report.

(7)(a) A state-only team shall make its report to the EPSB. For each teacher preparation program, the evaluation team shall make one (1) of three (3) recommendations:

1. Full approval;
2. Approval with stipulations specified; or
3. Denial of approval.

(b) For each standard, the team will render a judgment of:

1. Met;
2. Met with specified stipulations; or
3. Not met.

Section 12. Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble for the evaluation team the records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include, but not be limited to the following:

- (1) The faculty handbook;
- (2) Committee minutes;
- (3) Samples of student files and portfolios;
- (4) Faculty transcripts;
- (5) A random sample of graduates' transcripts;
- (6) Course syllabi;
- (7) Forms used in admission and retention of teacher education students; and
- (8) Documents showing methodology and results of continuous assessment within programs and follow-up studies of program graduates.

Section 13. Preparation and Distribution of the Draft Evaluation Report. (1) For state-only visits, the EPSB staff liaison shall collect the written evaluation pages from each team member before leaving the institution and shall have the first draft typed and distributed to all team members. Any revisions shall be consolidated by the team chair who shall then prepare the final report of the evaluation team. The

final report of the evaluation team shall be printed by the EPSB and delivered to the institution and to the Board of Examiner members within thirty (30) days of the conclusion of the on-campus visit.

(2) For NCATE institutions, the joint team report shall be compiled by the team chair and sent to NCATE. NCATE shall send a copy of the report to the EPSB and to the institution.

Section 14. Institutional Response to the Evaluation Report. (1) The institution shall provide a written response to the team report within thirty (30) days of receipt of the report. The response shall address the NCATE standards related to unit accreditation and the state program approval standards. The institutional response shall focus on possible errors of process or lack of information. NCATE institutions shall send their written response to NCATE and to the EPSB. Non-NCATE institutions shall send their written response to the EPSB.

(2) In the event that a follow-up report is prescribed as a consequence of the evaluation process, the institution shall follow the instructions that are provided with the follow-up report.

(3) In the event the institution chooses to appeal any part of the evaluation results, the procedure stated in Section 20 of this administrative regulation shall be followed.

(4) The institution shall make annual reports relating to the unit for teacher education and relating to the programs of preparation as described in Section 5 of this administrative regulation.

Section 15. Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSB, reporting to the Program and Technical Assistance Committee of the Board. The chairperson of the EPSB shall appoint the Accreditation Audit Committee as follows:

- (a) Two (2) lay members;
- (b) Two (2) classroom teachers, appointed from nominees provided by the Kentucky Education Association;
- (c) Two (2) teacher education representatives, one (1) from a state-supported institution and one (1) from an independent teacher education institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and
- (d) One (1) school administrator appointed from nominees provided by the Kentucky Association of School Administrators.

(2) The chairperson of the EPSB shall designate a member of the Accreditation Audit Committee to serve as its chairperson and to report to the Program and Technical Assistance Committee.

(3) Appointments shall be for a period of four (4) years except that one-half (1/2) of the initial appointments shall be for two (2) year terms. Members may serve additional terms if renominated and reappointed in the manner described for membership. Vacancies shall be filled as they occur in a manner consistent with the provisions for initial appointment.

(4) All members of the Accreditation Audit Committee shall be trained in the national accreditation standards and procedures by NCATE or by NCATE-approved Kentucky trainers.

(5) The Accreditation Audit Committee shall review the reports and materials constituting the institutional self studies, the report of the evaluation team, and the institutional response to the evaluation report and shall then prepare recommendations for consideration by the Program and Technical Assistance Committee.

(a) For all institutions, the committee shall review procedures of the Board of Examiners to determine whether approved accreditation guidelines have been followed.

(b) For institutions participating in both state and national accreditation, the committee shall accept the NCATE decision with respect to accreditation of the institutional unit for teacher education, but shall make its own recommendations about the individual programs of teacher preparation offered by the institution.

(c) For institutions seeking state accreditation and program approval, the committee shall make a recommendation with respect

to accreditation of the institutional unit for teacher education as well as for the individual programs of preparation.

(6) The Accreditation Audit Committee shall compile accreditation data and related information across all Kentucky institutions that prepare school personnel. It shall periodically prepare for the EPSB reports and recommendations regarding accreditation standards and procedures that might be needed to improve and streamline the accreditation process and the preparation of school personnel.

Section 16. Official Action by the Education Professional Standards Board. (1) For both the NCATE-accredited institutions and the state-accredited institutions, the evaluation team report, the institutional response, and the recommendations of the Accreditation Audit Committee shall be forwarded to the Program and Technical Assistance Committee.

(a) For NCATE-accredited institutions, the committee shall make a determination and a recommendation to the EPSB with respect to the approval of each program to prepare school personnel that is offered by the institution.

(b) For state-accredited institutions, the committee shall make a determination and a recommendation to the EPSB with respect to the accreditation of the teacher education unit of the institution, as well as with respect to approval for each program to prepare school personnel that is offered by the institution.

(2) The EPSB shall consider the findings and recommendations of the Program and Technical Assistance Committee and shall make the final determination regarding the accreditation of the teacher education unit and approval of programs to prepare school personnel.

(3) No institution shall have its accreditation removed following a continuing accreditation visit. However, the EPSB may require a full accreditation visit, as though for initial accreditation, two (2) years following a continuing accreditation visit if the board determines that deterioration of institutional conditions warrant a full accreditation visit. Accreditation may then be denied, or stipulations set, as described in the following sections.

(4) An action letter shall be sent to the institution reporting the official action of the EPSB and indicating the year of the next evaluation visit. In cases of denial or of approval with stipulations, the letter shall specify shortcomings that shall be addressed by the institution in order to gain full approval, as well as the timeline for meeting the stipulations.

(5) State approval with stipulations may be extended for no more than three (3) years, with return visits by a state team at one (1) year intervals at the institution's expense if stipulations are not completed within the first year. A state team making a visit at the end of a three (3) year period of extended approval may recommend to the EPSB full approval or denial of approval. If a recommendation for denial of approval is accepted by the EPSB, the following shall occur:

(a) State approval for all certification programs shall be withdrawn.

(b) The institution shall inform students who are admitted to certification programs after state approval has been denied that they shall not receive Kentucky certificates.

(c) The institution shall inform enrolled students that only those who successfully complete their ranking and/or certification programs and are recommended for certification within the twelve (12) months immediately following denial of approval shall receive Kentucky certificates and/or rank change.

(d) All other students seeking Kentucky certification or rank change shall transfer to an approved program at another institution in order to receive certification/rank change.

(6) If sufficient progress has been made during the initial twelve (12) month extension of program approval to merit approval with stipulations, the EPSB may extend state approval for an additional year, provided the extension does not exceed the three (3) year limit following the initial notice of denial.

(7) In the event an institution seeking NCATE accreditation

receives negative team findings on both national accreditation standards and program approval, the EPSB may extend state approval for one (1) year, after which the board will send a team to assess the progress the institution has made toward removing the stated inadequacies. No more than two (2) additional one (1) year extensions may be granted, after which board approval shall be withdrawn.

(8) Following state-only visits where the EPSB has approved a recommendation to deny accreditation, the institution shall receive a notice of denial that provides for one (1) year to correct deficiencies. Students who satisfactorily complete their certification/ranking programs during the twelve (12) months covered by the notice of denial shall receive the appropriate certificate/rank upon institutional recommendation. Before the end of the twelve (12) months, staff of the EPSB shall conduct a site visit. If specified deficiencies have not been corrected, the following shall occur:

(a) A total denial of all state approval of certification programs for school personnel shall be imposed on the institution.

(b) The institution shall inform students who are admitted to certification programs after state accreditation has been denied that they shall not receive Kentucky teaching certificates.

(c) The institution shall inform enrolled students that only those who successfully complete their ranking and/or certification programs and are recommended for certification within the twelve (12) months immediately following denial of accreditation shall receive Kentucky certificates and/or rank change.

(d) All other students seeking Kentucky certification or rank change shall transfer to an approved program at another institution in order to receive certification/rank change.

Section 17. Public Disclosure. (1) After all unit and program approval decisions have become final, the EPSB shall prepare notice of its action on the approval status of the professional education unit and on the specific programs of each institution. This public disclosure notice shall include all essential information provided in the action letter(s), including standards not met, program strengths and weaknesses, dates of approval or denial, and specific listings of approved programs.

(2) At the following meeting of the EPSB, the public disclosure notice shall be entered into the minutes of the board.

(3) Thirty (30) days after the institution has received the action letter(s), the EPSB shall on request provide a copy of the public disclosure notice to the Kentucky Education Association, the Council on Higher Education, and the Council of Independent Kentucky Colleges and Universities. Others may receive a copy of the public disclosure notice upon direct request to the EPSB.

Section 18. Appeals Process. (1) In the event of a negative decision, the institution has the right to appeal within thirty (30) days of receipt of the EPSB action letter. An institution may appeal an adverse decision only on the grounds that prescribed standards were disregarded, stated procedures were not followed, or evidence favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed through the chair of the EPSB from members of the Board of Examiners who have had no involvement with the team visit nor a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 19. Preparation for Continuing Accreditation. (1) Appropriate follow-up measures, when required, shall be conducted by the EPSB.

(a) On an annual basis, data from the institution's annual admission and status reports shall be monitored by EPSB staff to determine the continuing approvability of all programs to prepare

school personnel.

(b) Three (3) years after an on-site visit, a review of an institution's annual reports and records shall be conducted. This review shall be conducted by NCATE staff for all NCATE institutions, with a copy of the review report sent to the EPSB. The review shall be conducted by the Reading Committee for state-only institutions. These reviews shall provide evidence necessary to determine continuing program approval. If continuing approval is determined to be questionable, EPSB staff shall visit the institution to determine whether a full accreditation visit should take place, or whether a recommendation for continuing accreditation with stipulations should be made to the EPSB.

(c) Five (5) years after an on-site review, a review team shall study data bank information and a continuing accreditation self-study that includes all programmatic (and other institutional) changes, and shall visit the institution.

(2) The unit's continuous assessment program shall be expected to provide the institution and the EPSB with systematic and ongoing information regarding program and unit strengths, weaknesses, and areas of progress.

Section 20. The "National Council for Accreditation of Teacher Education Standards for the Accreditation of Professional Education Units", revised 1995, and the EPSB Annual Report Form, dated 1996, are hereby adopted and incorporated by reference and may be inspected, copied, and obtained from the Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROSA WEAVER, Chair

APPROVED BY AGENCY: September 23, 1996

FILED WITH LRC: September 26, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 22, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by, November 15, 1996, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Dr. Betty Lindsey, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Phone: (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Lynn Fluegge

(1) Type and number of entities affected: 26 institutions of higher education offering teacher education programs.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No additional cost.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Each institution will be

required to modify its admissions reporting and assessment to include criteria for acceptance.

2. Second and subsequent years: None

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current policies contain out-of-date requirements and are fragmented. The regulation will combine new standards and updated policies in a single regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Teacher Education Committee Policy 12.2.

(a) Necessity of proposed regulation if in conflict: Regulation will remove overlap and contradiction between old policies and regulations and this regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, this regulation removes conflict, includes new program standards and, eliminates duplicative policies.

(10) Any additional information or comments: No

(11) TIERING: Is tiering applied? No. All teacher education programs will follow the same regulations in the preparation of professional educators.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (New Administrative Regulation)

704 KAR 20:700. Standards for admission to teacher education.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that teacher education institutions be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that certificates shall be issued to persons who have completed programs approved by the Education Professional Standards Board. This administrative regulation establishes the standards for admission to teacher education programs and is not required by federal law or regulation.

Section 1. Selection and Admission to Teacher Education Programs. In addition to appropriate National Council for Accreditation

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of Teacher Education standards incorporated under 704 KAR 20:695, each teacher education institution shall develop a plan of selection and admission of teacher candidates for the teacher education program, which shall include:

- (1) Tests to measure general academic proficiency;
- (2) Review of the Professional Code of Ethics for Kentucky School Personnel established in 704 KAR 20:680; and
- (3) A declaration signed by each teacher candidate affirming a commitment to upholding the code and acknowledging awareness of information required for state certification.

Section 2. Tests to Measure General Academic Proficiency. (1) The teacher education institution shall determine whether each applicant exhibits an acceptable level of competency in oral and written communication as an admission requirement.

(2) Students who plan to apply for admission to a teacher preparation program shall provide to the teacher education institution official scores of tests to measure general academic proficiency. No person shall be permitted to apply for admission to a preparation program leading to certification as a teacher without first providing evidence of meeting the general academic proficiency requirement.

(3) The teacher education institution shall implement one (1) or more of the following plans:

(a) Plan I. A minimum composite score of 21 on the Enhanced American College Test (ACTE), or 19 on the American College Test (ACT);

(b) Plan II. 970 on the Scholastic Aptitude Test (SAT), or 840 if the SAT was taken prior to the fall 1995 semester;

(c) Plan III. The state minimum scores on the Communication Skills and General Knowledge portions of the Praxis tests reevaluated and approved by the Education Professional Standards Board;

(d) Plan IV. A score established by the Education Professional Standards Board for the Preprofessional Skills Test (PPST);

(e) Plan V. Graduate Records Exam (GRE) results, a minimum of 400 in each component (verbal, quantitative, analytical); or

(f) Plan VI. Institutions of higher education may use an alternate test provided the following guidelines are met by the institution requesting the alternative:

1. Provide evidence that the alternative test score covers the areas of written communication, reading, and computational skills;

2. Demonstrate that the passing scores for students on the alternative test are equivalent to passing scores on the ACTE, SAT, PPST, Praxis, or GRE;

3. Provide a regular review (at least every third year) to show that alternative test passing scores remain equivalent to state required test passing scores; and

4. Describe procedures for the admission of students who transfer from other teacher education programs in the state.

Section 3. Annual Report. Each teacher education institution shall report annually to the Education Professional Standards Board the scores of the admission tests for each applicant, including scores for applicants denied admission.

ROSA WEAVER, Chair

APPROVED BY AGENCY: September 23, 1996

FILED WITH LRC: September 26, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 22, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by, November 15, 1996, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Dr. Betty Lindsey, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Phone: (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Betty Lindsey

(1) Type and number of entities affected: 26 institutions of higher education offering teacher education programs.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No additional costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: each institution will be required to modify its admissions reporting, assessment to include criteria for acceptance.

2. Second and subsequent years: None

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Increased cost.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current policies contain out-of-date requirements and are fragmented. The regulation will combine new standards and updated policies in a single regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Teacher Education Committee Policy 12.2.

(a) Necessity of proposed regulation if in conflict: Regulation will remove overlap and contradiction between old policies and regulations and this regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, this regulation removes conflicts, includes new program standards, and eliminates duplicative policies.

(10) Any additional information or comments: No

(11) TIERING: Is tiering applied? No. All teacher education

programs will follow the same regulations in the preparation of professional educators.

**EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(New Administrative Regulation)**

704 KAR 20:705. Admission, placement, and supervision in student teaching.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that teacher education institutions be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that certificates shall be issued to persons who have completed programs approved by the Education Professional Standards Board. This administrative regulation establishes the standards for admission, placement, and supervision in student teaching. This is not required by federal law or regulation.

Section 1. Admission to Student Teaching. In addition to the appropriate sections of the National Council for Accreditation of Teacher Education standards which are incorporated under 704 KAR 20:695, each teacher education institution shall determine minimum standards for admission to student teaching which shall include the procedures stated below. Admission to student teaching shall include a formal application procedure for each teacher candidate.

(1) A valid and current medical examination, which includes a tuberculosis test, shall be placed on file with the admissions committee.

(2) The teacher candidate shall have achieved the following academic requirements:

(a) An overall academic standing of at least 2.50; and

(b) An academic standing of at least 2.50 in any academic specialty for which the institution will recommend a certificate.

(3) Prior to and during the student teaching experience, the teacher candidate shall adhere to the Professional Code of Ethics for Kentucky School Personnel established in 704 KAR 20:680.

Section 2. Teacher-student Ratio. The ratio of student teachers to supervising teachers shall be one (1) to one (1) unless some very unusual but suitable circumstances exist as approved by the Office of Teacher Education and Certification. In any event, the ratio shall not exceed two (2) student teachers per supervising teacher.

Section 3. College Coordinator. (1) The college coordinator shall make periodic observations of the student teachers in the classroom and shall prepare a written report on each observation and share it with the student teacher.

(2) The observation report shall be filed as a part of the student record and also used as a validation of the supervisory function.

(3) Student teachers shall receive periodic and regular on-site observation and a critique of the actual teaching situation a minimum of four (4) times excluding seminars and workshops.

(4) The college coordinator shall also be available to work with the student teacher and personnel in the cooperating school on any problem that may arise relating to the student teaching situation.

Section 4. Professional Experience. In addition to the appropriate NCATE standards incorporated by reference under 704 KAR 20:695, the teacher education institution shall provide an opportunity for the student to assume major responsibility for the full range of teaching duties in a real school situation under the guidance of qualified

personnel from the institution of higher education or the cooperating elementary or secondary school. Each teacher education institution shall provide a full professional semester to include a period of student teaching for a minimum of twelve (12) weeks, full day, or equivalent, within the grade levels corresponding to the student teacher's certification program.

ROSA WEAVER, Chair

APPROVED BY AGENCY: September 23, 1996

FILED WITH LRC: September 26, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 22, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by, November 15, 1996, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Dr. Betty Lindsey, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Phone: (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Betty Lindsey

(1) Type and number of entities affected: 26 institutions of higher education offering teacher education programs.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No additional costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current policies contain out-of-date requirements and are fragmented. The regulation will combine new standards and updated policies in a single regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None
 (b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Teacher Education Committee Policy 12.3.

(a) Necessity of proposed regulation if in conflict: Regulation will remove overlap and contradiction between old policies and new standards in this regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, this regulation removes out-of-date policy requirements and replaces them with new program standards.

(10) Any additional information or comments: No

(11) TIERING: Is tiering applied? No. All teacher education programs will follow the same regulations in the preparation of professional educators.

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Professional Standards Board

(New Administrative Regulation)

704 KAR 20:710. Professional certificate for instructional leadership - school principal, all grades.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualification for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. Teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school principals, at all grade levels. This administrative regulation is not required by federal law.

Section 1. Conditions and Prerequisites. (1) The provisional and professional certificates for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.

(2) The provisional and professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.

(3) Prerequisites for admission to the program of preparation for the provisional and professional certificate for instructional leadership - school principal shall include:

(a) Qualification for a Kentucky classroom teaching certificate;

(b) A 2.5 grade point average on a 4.0 scale on all collegiate preparation;

(c) Successful completion of a generic test of communication skills, general knowledge, and professional education concepts approved by the Education Professional Standards Board as a condition for the issuance of a Kentucky classroom teaching certificate or other tests authorized for this purpose by the appropriate state agency recognized by the Education Professional Standards Board through contract with Interstate Agreement on Qualification of Educational Personnel; and

(d) Successful completion of the Kentucky Teacher Internship

Program, as provided in 704 KAR 20:045, or two (2) years of successful teaching experience outside the state of Kentucky.

Section 2. Kentucky Administrator Standards for Preparation and Certification. (1) The approved program of preparation for the provisional certificate for instructional leadership - school principal shall include a master's degree in education and shall be designed to address recommendations of relevant professional organizations including the National Policy Board for Educational Administration, the University Council for Educational Administration, the National Council of Professors of Educational Administration, the National Association of Secondary School Principals, and the American Association of School Administrators and to prepare candidates for the position of School Principal as specified in the following Administrator Standards adopted by the Education Professional Standards Board:

(1) Administrator standard I. The administrator is the instructional leader who guides, facilitates, and supports the curriculum, instruction, and assessment.

(2) Administrator standard II. The administrator practices positive, promotional, and proactive communication strategies (oral and written) for effective parent, community, school involvement to improve the learning environment for all students.

(3) Administrator standard III. The administrator is the organizational leader and manager who acts within legal and ethical guidelines to accomplish educational purposes.

Section 3. Assessment Prerequisites for the Provisional Certificate for Instructional Leadership - School Principal. (1) All applicants for certification as a school principal, including vocational principal, shall attain the specified minimum score on each of the following assessments prior to receiving the provisional certificate, except as provided for in subsections (2) and (3) of this section:

(a) Kentucky Specialty Test of Instructional and Administrative Practices, with a score of eighty-five (85) percent correct responses; and

(b) Written test of applied knowledge approved by the Education Professional Standards Board and to be specified by administrative regulation, prior to the date of applicability of this administrative regulation, as set out in Section 7 of this administrative regulation.

(2) An in-state candidate who has completed all requirements, except assessment, may be granted a one (1) year provisional certificate upon notification to the Education Professional Standards Board by the employing superintendent that the selecting school council had three (3) or fewer otherwise qualified applicants from which to select a principal. Upon report of successful completion of the assessments, an initial certificate valid for an additional four (4) years shall be issued.

(3) A one (1) year provisional certificate for instructional leadership - school principal shall be issued to an applicant who holds a valid certificate for school principal from another state. The assessments approved by the Education Professional Standards Board shall be successfully completed during the one (1) year period of validity. Upon report of successful completion of the assessments, an initial certificate valid for an additional four (4) years shall be issued.

Section 4. Statement of Eligibility for Internship. A statement of eligibility for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

(1) Has successfully completed an approved program of preparation, including a portfolio to be established by administrative regulation prior to the date of applicability of this administrative regulation as set out in Section 7 of this administrative regulation;

(2) Has three (3) years of full-time teaching experience; and

(3) Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period of completion of assessments as identified in Section

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3 of this administrative regulation.

Section 5. Principal Intern Program. (1) Upon confirmation of employment as a principal or full-time assistant principal during the period of validity of the statement of eligibility, the provisional certificate for instructional leadership - school principal shall be issued for one (1) year. During the one (1) year period of validity, the principal or assistant principal shall be enrolled in the principal internship program as provided for in KRS 161.027 and 704 KAR 20:470.

(2) The principal internship program shall be waived for persons meeting experience requirements specified in KRS 161.027.

Section 6. Renewal. (1) Upon successful completion of the principal internship program, the professional certificate for instructional leadership - school principal, level I, shall be issued for the remaining four (4) years.

(2) The renewal of the professional certificate for instructional leadership - school principal level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program, including portfolio requirements to be established by the Education Professional Standards Board prior to the date of applicability of this administrative regulation, as set out in Section 7 of this administrative regulation. The certificate shall be valid for five (5) years.

(3) Each subsequent five (5) year renewal of the professional certificate for instructional leadership - school principal, level II, shall require the following:

(a) Successful completion of two (2) years of experience as a school principal; and

(b) Completion of continuing education requirements to be established by the Education Professional Standards Board prior to the date of applicability of this administrative regulation as set out in Section 7 of this administrative regulation; or

(c) Completion of three (3) semester hours of additional graduate credit for each required year of experience and directly related to the position of school principal, if the applicant has not been successfully employed as a school principal for at least two (2) of the last five (5) years.

Section 7. Effective Dates. (1) The provisions for the issuance of the provisional and professional certificate for instructional leadership - school principal, levels I and II, shall apply to all students admitted to programs of preparation beginning September 1, 1998.

(2) Candidates admitted prior to September 1, 1998, to approved preparation programs for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 shall complete the program by September 1, 2000.

(3) Candidates who fail to complete the approved programs and appropriate assessments specified in subsection (2) of this section by September 1, 2000, and do not apply for certification by May 1, 2001, shall be required to qualify for the certificate identified in this administrative regulation.

(4) Colleges and universities shall take adequate steps to inform candidates in these programs regarding the deadline dates identified in this section.

ROSA WEAVER, Chair

APPROVED BY AGENCY: September 23, 1996

FILED WITH LRC: September 26, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 22, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by, November 15, 1996, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Dr. Betty Lindsey, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Phone: (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tammie

(1) Type and number of entities affected: All applicants for the Kentucky principal certificate.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on promulgating administrative body: No additional costs.

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Education Professional Standards Board will disseminate information pertaining to the new Principal certification to local school districts, colleges, universities, and authorized accrediting entities.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No comments received.

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Current regulation provides certification for principals in Kentucky at the masters' plus 18 hour level. The proposed new regulation will allow an individual to obtain principal certification at the masters' level. Therefore, allowing a shorter length of time of preparation for the principal certificate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

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(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Requirements are applied uniformly to all applicants for the principal certification.

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control (New Administrative Regulation)

804 KAR 4:330. Direct sales from out-of-state companies.

RELATES TO: KRS 244.165, 244.167

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 244.165 and 244.167, enacted by the 1996 General Assembly, became effective July 15, 1996. KRS 244.165 and 244.167 prohibit a person who is in the business of selling alcoholic beverages in another state or country, from shipping or causing to be shipped, any alcoholic beverage directly to any Kentucky resident or business who does not hold a valid wholesale or distributor license issued by the Commonwealth of Kentucky.

Section 1. The shipment of any alcoholic beverage into the Commonwealth of Kentucky in violation of KRS 244.165 or 244.167 shall create a rebuttable presumption that the shipment was intentional.

Section 2. If the Department of Alcoholic Beverage Control finds probable cause that a violation of KRS 244.165 or 244.167 has occurred, it may issue an administrative citation to the alleged violator in accordance with the provisions of KRS Chapters 241 and 13B. The evidentiary hearing on the allegations contained in the citation shall conform with the requirements of KRS Chapter 13B.

Section 3. In any proceeding brought pursuant to KRS 244.165 or 244.167, the Department of Alcoholic Beverage Control bears the burden of proving that the alleged conduct was accompanied by a culpable mental state; willful, intentional or reckless disregard for the provisions of KRS 244.165 or 244.167.

Section 4. Any person found to be in violation of KRS 244.165 or 244.167, accompanied by a culpable mental state shall, for a first offense, be issued a cease and desist order by certified mail, return receipt requested. Any person found to be in a second or subsequent violation of KRS 244.165 or 244.167, accompanied by a culpable mental state, may be referred to the Commonwealth Attorney in the county of venue for further action.

Section 5. A resident of Kentucky may ship up to three (3) cases of alcoholic beverages during a visit to another state or country to his home, business, or mailing address for his personal use.

GREG GINTER, Commissioner

LAURA DOUGLAS, Secretary

APPROVED BY AGENCY: August 28, 1996

FILED WITH LRC: September 16, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, November 27, 1996, at 1 p.m., in the hearing room of the Kentucky Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 20, 1996, five working days prior to the hearing, of their intent to attend. If the required 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 contact person. CONTACT PERSON: Ms. Cynthia Newton, Secretary to the Board, Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky 40601, phone 502-573-4850, fax 502-573-5672.

REGULATORY IMPACT ANALYSIS

Contact person: Pamela Carroll Farmer

(1) Type and number of entities affected: All out-of-state companies in the business of selling alcoholic beverages who do not hold a valid wholesale or distributor license issued by the Commonwealth of Kentucky, Department of Alcoholic Beverage Control.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Minimal paperwork. Anticipate compliance.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: No new employees anticipated.

(a) Direct and indirect costs or savings: Amount of uncollected state and local taxes and license fees unknown at this time.

(b) Reporting and paperwork requirements: None

1. First year: Minimal costs.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(4) Assessment of anticipated effect on state and local revenues: No public comments received.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No existing regulation which would legally permit an out-of-state company from selling and shipping alcoholic beverages into Kentucky.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Direct sales of alcohol could not be made to adults or minors in dry areas of state, and minors would not be permitted to order and receive alcoholic beverages.

(b) State whether a detrimental effect on enforcement and public health would result if not implemented: Sales would be made to persons who are not permitted to receive alcoholic beverages.

(c) If detrimental effect would result, explain detrimental effect: The detrimental effects would be: 1) that sales of alcoholic beverages would be made to persons who are not permitted to receive alcoholic beverages, eg., dry territories; 2) minors would be permitted to place orders, pay for and receive alcohol beverages purchased through an

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out-of-state shipper; 3) licensed Kentucky wholesalers and distributors would lose sales to unlicensed out-of-state shippers; and 4) the Commonwealth would not be able to collect taxes on liquor sold to persons in Kentucky by unlicensed out-of-state shippers.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation will be applied equally to all out-of-state companies selling alcoholic beverages for direct shipment to customers in Kentucky.

FEDERAL MANDATE ANALYSIS COMPARISON

1. No federal statute or regulation constituting a federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. This new administrative regulation will assist local governments in controlling the traffic of alcoholic beverages within its boundaries by permitting only legal alcohol sales and deliveries and insuring receipt of all taxes on alcoholic beverages. This new administrative regulation will assist local governments in dry territories in maintaining their status as dry. This new administrative regulation will also aid in keeping minors from purchasing and receiving alcoholic beverages in dry or wet territories.

PUBLIC PROTECTION & REGULATION CABINET

Department of Insurance
(New Administrative Regulation)

806 KAR 5:060. Registration of service contracts for consumer products.

RELATES TO: KRS 304.5-070

STATUTORY AUTHORITY: KRS 304.5-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.5-070 requires that makers of service contracts who repair, or maintain consumer products register with and maintain registration with the department to be exempt from the definition of casualty insurance. This administrative regulation sets forth the filing requirements for that registration.

Section 1. Definitions. "Maker of service contract" or "maker" is the entity contractually obligated under the terms of the service contract.

Section 2. A maker of a service contract shall register with the department by providing the name and address of its principal office and the other required information or documentation pursuant to Section 3 of this administrative regulation.

Section 3. Service contracts to repair, replace, or maintain consumer products shall not be considered casualty insurance if the maker of the service contract meets one (1) of the following requirements:

(1)(a) Maintains a net worth of at least 100 million dollars and registers with the commissioner by providing the following:

1. Its current annual report;
2. A copy of its 10K or 20F form as filed with Securities Exchange Commission; or
3. A financial statement audited by an independent certified public accountant in conformity with generally accepted accounting practices;

es;

(b) Immediately notifies the department in writing of any change that would decrease the net worth of the maker below 100 million dollars;

(2)(a) Maintains an insurance policy or performance bond that:

1. Assures performance of the duties of the maker for all service contracts issued in Kentucky;

2. Shall not be terminated unless at least thirty (30) days prior written notice is given to the commissioner; and

3. Shall state that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker; and

(b) Provide a copy of the insurance policy or performance bond; or

(3)(a) Maintain an insurance policy or performance bond that:

1. Is written for an amount of \$50,000 or twenty-five (25) percent of the maker's annual revenues from the service contracts issued in Kentucky, whichever is greater;

2. Shall not be terminated unless at least thirty (30) days prior written notice is given to the commissioner; and

3. Shall state that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker; and

(b) Register with the commissioner by providing the following:

1. A copy of the insurance policy or performance bond;
2. The amount of annual revenues from the sales of service contracts in Kentucky for the previous year ending December 31; and
3. A projection of the revenue from service contracts to be sold in Kentucky for the current year;

(c) The document giving the required information shall be signed and certified under oath by an officer of the company.

Section 4. (1) If the initial registration has not been affirmatively accepted or rejected by the commissioner within thirty (30) days of filing, then the registration requirements shall be deemed met.

(2)(a) After the initial registration, each maker of a service contract shall annually, on or before March 1, file a report that sets forth or is accompanied by the information required in Section 3 of this administrative regulation;

(b) If a maker ceases issuing service contracts, annual reports shall continue to be filed through the duration of all outstanding service contracts;

(3) If at any time, the maker fails to demonstrate compliance with Section 3 of this administrative regulation, the commissioner may revoke the maker's registration. Upon revocation of registration, the maker shall immediately cease issuing service contracts.

Section 5. (1) Each service contract shall conspicuously state the name and address of the maker of the service contract; and

(2) If the maker of the service contract has an insurance policy or performance bond to assure contractual duties, the following must be stated in the service contract:

(a) Name and address of authorized underwriting insurer issuing insurance policy or performance bond; and

(b) A statement that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 25, 1996

FILED WITH LRC: October 1, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996, at 10 a.m. (ET) in the

offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on November 21, 1996, in order to receive consideration. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Carla H. Montgomery, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 239, Fax Number: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: The department does not have this information. This is a new exemption created by KRS 304.5-070(q).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments about the cost of living and employment at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments concerning the cost of doing business in the geographical area at this time.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Makers of service contracts described in KRS 304.5-070(q) must register with the Department of Insurance and demonstrate sufficient net worth or have an insurance policy or performance bond.

2. Second and subsequent years: The makers of service contracts would need to keep the Department of Insurance advised of any changes or updates to their original filings.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department cannot predict, because we do not know how many filings will be received.

2. Continuing costs or savings: Same as above comment.

3. Additional factors increasing or decreasing costs: The number of applicants.

(b) Reporting and paperwork requirements: The department will have to review all of the filings. The department will have to send notice of approval or disapproval to the applicants. The department will have to review annual filings.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising

from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received at this time concerning the economic impact.

(b) Kentucky: Same comment as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Department of Insurance needs this information to adequately review whether the makers of service contracts have sufficient net worth and an adequate insurance policy or performance bond to meet the exemption.

(8) Assessments of expected benefits: The department will be able to make an informed decision, and the applicants will know how to become exempt.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied because the administrative regulation will be applied equally to all makers of service contracts who register with the department.

PUBLIC PROTECTION AND REGULATION CABINET Public Service Commission (New Administrative Regulation)

807 KAR 5:003. Utility filing of updated information.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3), 278.230(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3)

provides that the commission may adopt, in keeping with KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.230(3) provides that utilities shall file information reasonably required by the commission. This administrative regulation prescribes the filing of updates to pertinent information.

Section 1. Updates Required. Each utility shall file updated written information on the following items with the commission within ten (10) days following any change in:

(1) The address of the utility's main corporate and Kentucky offices (if any), including street name and address and post office box, city, state, and zip code;

(2) Name, telephone number, facsimile number (if any), and address of the person who is to serve as primary liaison with the commission in regard to Kentucky operations of the utility.

PAUL PATTON, Governor

LINDA K. BREATHITT, Chairman

APPROVED BY AGENCY: October 1, 1996

FILED WITH LRC: October 2, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1996 at 10 a.m. at the Public Service Commission's office, Hearing Room No. 1, 730 Schenkel Lane, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 15, 1996, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by

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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 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: Don Mills, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, Tel: (502) 564-3490, Fax: (502) 564-3460.

REGULATORY IMPACT ANALYSIS

Contact person: Don Mills, Executive Director

(1) Type and number of entities affected: According to current commission records, 1,295 regulated utilities provide service in Kentucky and will be affected by the amendments to this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments on this subject were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments on this subject were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No significant increase in paperwork or other requirements is required. Most utilities already file information updates as required by this proposed regulation. The cost of compliance will be negligible.

2. Second and subsequent years: No long-term effect is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct costs to the commission are expected. However, there will be some savings in time and expense in that commission staff will not be required to telephone other commissions, conduct Internet research, etc. to ascertain the whereabouts of utilities which have changed address, telephone number, etc., without having informed the commission of the change.

1. First year: See answer to (3)(a).

2. Continuing costs or savings: See answer to (3)(a).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See answer to (3)(a).

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is required to enforce or implement this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. However, no economic effect on any geographical area is expected.

(b) Kentucky: No public comments were received. However, no economic effect on Kentucky is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There does not appear to be a reasonable alternative method to ensure that the commission has current information enabling it to contact the utility when necessary.

(8) Assessment of expected benefits: Up-to-date information filed pursuant to the proposed regulation will enable the commission to

contact utilities in a timely manner when necessary. In addition, time and expense currently necessary to ascertain the whereabouts of utilities will be conserved.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None exists.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Regardless of the utility's size, it is reasonable and necessary for it to inform the commission in a timely manner when its address, telephone number, or contact person has changed.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions
Division of Law and Regulatory Compliance
(New Administrative Regulation)

808 KAR 10:291. Repeal of 808 KAR 10:290.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: 808 KAR 10:290 was ill advised and should never have been promulgated. Its repeal is to prevent registered agents from utilizing sales assistants to perform certain duties which require registration pursuant to KRS 292.330 and to protect customers.

Section 1. 808 KAR 10:290, Assistant representative, is hereby repealed.

LARRY D. LANDER, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, November 22, 1996, at 10 a.m., local prevailing time, at The Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William E. Doyle, Staff Attorney, Department of Financial Institutions, Division of Law and Regulatory Compliance, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

ADMINISTRATIVE REGISTER - 2371

REGULATORY IMPACT ANALYSIS

Contact person: William E. Doyle

(1) Type and number of entities affected: Approximately 40 entities out of 1,100 entities.

(2) Direct and indirect costs or savings on the: Indeterminable

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No effect.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No effect.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Requirements eliminated.

2. Second and subsequent years: Requirements eliminated.

(3) Effects on the promulgating administrative body: Requirements eliminated.

(a) Direct and indirect costs or savings:

1. First year: Indeterminable

2. Continuing costs or savings: Indeterminable

3. Additional factors increasing or decreasing costs: Indeterminable

(b) Reporting and paperwork requirements: Eliminated

(4) Assessment of anticipated effect on state and local revenues: Eliminated

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No revenue needed.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public hearing requested. No significant economic impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Indeterminable.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All affected entities are in the same class. Other classes are not affected.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions Division of Law and Regulatory Compliance (New Administrative Regulation)

808 KAR 10:300. Registration exemptions - pension plans.

RELATES TO: 292.400(11), 292.410(1)(q)

STATUTORY AUTHORITY: KRS 292.410(1)(q), 292.500(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: To relieve industry of excess compliance burdens and dispense with the necessity of the Department of Financial Institutions having to issue

an order each time such relief is afforded to industry.

Section 1. Pursuant to KRS 292.410(1)(q), the commissioner having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the following class of transactions is determined to be exempt from the registration provisions of KRS 292.330 through 292.390:

(1) Offers or sales of a security by an issuer pursuant to a written compensatory benefit plan including, without limitation, a purchase, savings, option, bonus, stock appreciation, profit-sharing, thrift, incentive, pension or similar plan, and interests in any such plan, provided that the offers and sales qualify for use of the registration exemption in United States Securities and Exchange Commission Rule 230.701 (17 CFR 230.701), as such rule exists on September 25, 1996, under Section 3(b) of the Securities Act of 1933 and further provided that the following further conditions and limitations are met:

(2) In view of the primary purpose of this regulation, which is to provide an exemption from the registration requirements of the Securities Act of Kentucky, the "Act", for securities issued in employee compensatory circumstances, the administrative regulation is not available for plans or schemes to circumvent this purpose, such as to raise capital. In such cases, registration or some other exemption from registration under the Act is required.

(3) There shall be no requirement that any filing be made with the Department of Financial Institutions of the Commonwealth of Kentucky to claim this exemption.

LARRY D. LANDER, Commissioner

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, November 22, 1996, at 10 a.m., local prevailing time, at The Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William E. Doyle, Staff Attorney, Department of Financial Institutions, Division of Law and Regulatory Compliance, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact person: William E. Doyle

(1) Type and number of entities affected: Corporations. Thousands.

(2) Direct and indirect costs or savings on the: Industry. Potentially, several hundred thousand dollars.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Indeterminable.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Reduced

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon

competition) for the:

1. First year following implementation: Reduced compliance and paperwork requirements. Decreased costs.

2. Second and subsequent years: Reduced compliance and paperwork requirements. Decreased costs.

(3) Effects on the promulgating administrative body: Reduced paperwork.

(a) Direct and indirect costs or savings: Slight reduction in agency costs. Increased productivity.

1. First year: Full impact first year.

2. Continuing costs or savings: Same each year thereafter.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Eliminated

(4) Assessment of anticipated effect on state and local revenues: Slight reduction in fee revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: Not applicable. No comments were received.

(a) Geographical area in which administrative regulation will be implemented: Applies to corporations nationwide.

(b) Kentucky: Included

(7) Assessment of alternative methods; reasons why alternatives were rejected: No acceptable alternatives available.

(8) Assessment of expected benefits: Indeterminable.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No, because all affected parties are similarly situated.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(New Administrative Regulation)

815 KAR 20:195. Medical gas piping installations.

RELATES TO: KRS 198B.050, 318.010, SB 242

STATUTORY AUTHORITY: KRS 198B.050(2), (5), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The 1996 General Assembly in SB 242 amended the definition of plumbing to include medical gas piping. KRS Chapter 318 requires that any person before he shall install any plumbing shall obtain a permit from the department prior to the installation and that the department shall cause such inspections as it may deem necessary. This administrative regulation is needed to define the term "medical gas piping" in accordance with industry practice, to identify the standard which licensed plumbers must use when installing this piping, and to identify the permitting, fee and inspection requirements for this special type of installation.

Section 1. Definitions. (1) "Medical gas piping" means a permanent fixed piping system in a health care facility which is used to convey oxygen, nitrous oxide, nitrogen, carbon dioxide, helium,

medical air and mixtures of these gases from its source to the point of use. This definition shall include the fixed piping associated with medical, surgical and gas scavenging vacuum systems, as well as bedside suction systems.

(2) "Health care facility" means hospitals, nursing homes, limited care facilities, clinics, ambulatory care centers, and office practice medical and dental offices, as defined in NFPA 99C, incorporated by reference in Section 2(1) of this administrative regulation.

(3) "NFPA" means the National Fire Protection Association.

Section 2. Standards and Procedures. (1) Installation standards. All new medical gas piping installations and additions to existing medical gas piping systems shall comply with the applicable provisions of "NFPA 99C, Standard on Gas and Vacuum Systems, 1996 Edition," hereby incorporated by reference in this administrative regulation.

(a) This standard is published by and available from the National Fire Protection Association, One Batterymarch Park, PO Box 9101, Quincy, Maryland 02269-9101.

(b) A copy of the standard is available to be inspected and copied at the Department of Housing, Buildings and Construction, 1047 US 127 South, Frankfort, Kentucky, Monday through Friday between 8 a.m. to 4:30 p.m.

(2) Permit required. The licensed master plumber shall make application for a permit to install medical gas piping prior to the installation. To obtain the permit, the master plumber shall:

(a) Pay a fee of twenty-eight (28) dollars for the medical gas system for each building; and

(b) Identify the person who will perform the installation. The person making the installation shall be a certified medical gas brazer as well as a licensed journeyman plumber.

(3) Supervision of the master. It shall be the responsibility of the licensed master plumber to assure that the person doing the brazing;

(a) Is properly certified as required by NFPA 99C;

(b) Using the proper products and storing them correctly; and

(c) Required testing and purging of the piping systems is done prior to putting into service.

(4) Final approval. Upon completion of the installation, the master plumber shall furnish the Division of Plumbing with the following certifications:

(a) Certification from the medical gas supplier or other qualified third party that the installation, including each outlet, meets the testing and purging requirements of the code; and

(b) Certification that the installation was performed by the certified brazer.

CHARLES A. COTTON, Commissioner

LAURA DOUGLAS, Secretary

APPROVED BY AGENCY: September 19, 1996

FILED WITH LRC: September 23, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, November 21, 1996 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 14, 1996, (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 the contact person.

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

(1) Type and number of entities affected: All persons who engage in the business of installing medical gas piping systems in medical care facilities.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No known direct or indirect costs here; public safety from contaminated medical gas lines.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Cost will increase because certified brazer enforcement mechanisms will be in place and a fee of \$28 for each new installation. Licensed plumber required.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Reduces competition because only licensed journeyman plumbers who are also certified brazers can make these installations. Paperwork is not difficult; third party inspection for final.

2. Second and subsequent years: Permits, fees and inspections should cover each other.

(3) Effects on the promulgating administrative body: Increased inspection responsibility.

(a) Direct and indirect costs or savings:

1. First year: Cost of establishing program; manpower concern can be satisfied by full complement of plumbing inspectors.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Permits required, \$28 fee; monitoring records of inspection including final industry third party inspection.

(4) Assessment of anticipated effect on state and local revenues: There should be no affect to state and local revenues. The fees should cover the service.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Permit fees in Division of Plumbing.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Because the standards are already in place, there should be no new impact, other than the cost of maintaining licensed and certified people statewide.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were available because statutes (KRS Chapter 318) requires all plumbing to be permitted; KBC requires standard NFPA 99C to be followed and new statute of 1996 session calls "medical gas piping" plumbing.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Positive effect of health by safeguarding against gas contamination.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No other agency is checking on these very important installations.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known

regulation or policy in 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Only one type installation is governed and must be done by plumber and certified brazer under law except regulation is flexible to allow "available 3rd party industry inspectors."

CABINET FOR HEALTH SERVICES

Office of Certificate of Need

(New Administrative Regulation)

900 KAR 6:010. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 216B.075, EO 96-862, 1996 Ky. Acts ch. 371

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040 requires the Cabinet for Health Services to promulgate administrative regulations outlining the certificate of need review procedures and to establish criteria for the issuance of certificates of need. This administrative regulation sets forth the certificate of need process, the requirements for batching applications, for review of the applications, for the issuance of advisory opinions, for public hearings on the applications and for "show cause" hearings on noncompliance with the provisions of KRS Chapter 216B and this administrative regulation. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and established the Office of Certificate of Need in the Cabinet for Health Services.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a certificate of need.

(2) "Division of Licensing and Regulation" means the Cabinet for Health Services, Office of the Inspector General, Division of Licensing and Regulation.

(3) "Emergency circumstances" means natural disasters, fire, vandalism, structural or mechanical failure, or other circumstances affecting existing health facilities and services that pose an imminent threat to the life, health, or safety of any citizen of the Commonwealth if not acted upon immediately.

(4) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(5) "Long-term care beds" means those beds located in a nursing facility, nursing home, skilled nursing beds, intermediate care beds, nursing facility beds, Alzheimer disease facility beds, and personal care beds.

(6) "Medically underserved areas" means those populations or geographic areas designated in the State Health Plan as being medically underserved.

(7) "Proposed service area" means the geographic area and population the applicant proposes to serve.

(8) "Public information channels" means the Office of Communications in the Cabinet for Health Services.

(9) "Show cause hearing" means a hearing before the cabinet or its designee at which a person is required to explain or demonstrate why the person should not be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

Section 2. Criteria. In determining whether to issue or deny a certificate of need the cabinet shall review each application for:

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(1) Consistency with State Health Plan, subject to biennial state budget authorizations and limitations for the Commonwealth.

(2) Need and accessibility.

(a) The defined geographic area's need for the proposed services;

(b) Accessibility of proposed service to the defined population, particularly those with an inability to access such services and those designated in the State Health Plan as medically underserved;

(c) The extent to which the health professions' schools in the area have access to the services for training purposes.

(3) Interrelationships and linkages.

(a) The relationship of the proposed service to the existing health care system of the defined geographic area and the state;

(b) The relationship, including the organizational relationship, of the proposed health service with ancillary or support services;

(c) The efficiency and appropriateness of the use of similar existing services and facilities to meet identified needs.

(4) Costs, economic feasibility, and resource availability.

(a) The availability of less costly or more effective alternatives to the proposal;

(b) The immediate and long-term financial feasibility of the proposal;

(c) The probable impact of the proposal on:

1. The applicant's costs and charges for providing health services; and

2. The costs and charges of other providers in the defined geographic area.

(d) The availability of resources, including health care personnel, management personnel, and funds for capital and operating needs;

(e) For construction or renovation projects, costs and methods of the project;

(f) The effect of competition on the supply of health services being reviewed and whether the approval of the application may unnecessarily increase the cost of health care to the public;

(g) Improvements or innovations in the proposed financing and delivery of health services that foster competition and promote quality and cost effectiveness.

(5) Quality of services.

(a) The quality of care provided by the applicant in the past; or

(b) The qualifications of the persons responsible for the quality of care to be provided;

(c) Any detrimental effects of the proposal on the quality of similar services in the area, including those associated with decreased utilization; and

(d) The ability of the applicant to comply with applicable licensure requirements.

Section 3. Letter of Intent. (1) At least thirty (30) days prior to submitting an application for a certificate of need, an applicant shall file a letter of intent with the cabinet or its designee on Letter of Intent Form Number 1.

(2) A letter of intent shall be valid for one (1) year.

(3) If an application is denied or withdrawn, the applicant shall file a new letter of intent before resubmitting an application.

(4) A letter of intent shall not be required from an applicant requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation.

Section 4. Application for Certificate of Need. (1) Upon receipt of a letter of intent, the cabinet or its designee shall provide the applicant with:

(a) Written acknowledgment of receipt of the letter of intent; and

(b) Copies of:

1. "Certificate of Need Application Form Number 2A"; or

2. "Certificate of Need Application for Ground Ambulance and Air Ambulance Service Providers Form Number 2B".

(2) The applicant shall file an original and two (2) copies of a

certificate of need application together with the prescribed fee set forth in 900 KAR 1:050 with the cabinet or its designee on or before the deadlines established by Section 5 of this administrative regulation.

(3)(a) Fifteen (15) days after receipt of an application, the cabinet or its designee shall:

1. Notify the applicant that the application is complete; or

2. Request specific additional information.

(b) If an application is not complete, the applicant shall:

1. Complete the application by submitting the requested specific additional information; or

2. Notify the cabinet that its application shall be processed as submitted.

(4) Upon receipt of an applicant's response, the cabinet or its designee shall:

(a) Declare an application complete; and

(b) Notify the applicant of the beginning of the review.

(5)(a) Public notice of review shall include all applications deemed complete six (6) or more working days before the scheduled date of the applicable public notice;

(b) After an application has been declared complete, an applicant may not submit additional information to be made part of the public record unless the information is introduced at a hearing.

(6)(a) Public notice of review shall include:

1. The schedule for the review; and

2. The period during which a public hearing may be requested by the applicant and other affected persons.

(b) The cabinet or its designee shall provide notice through public information channels;

(c) The cabinet or its designee shall mail notice to mayors, county judge executives, and all known providers of similar services in the proposed service area.

(7) An applicant may defer review of an application by notifying the cabinet that it wishes to defer review of its application at any time prior to the entry of a decision to approve or deny the application.

(a) If deferral is requested, the application shall be deferred to the next regular batching cycle;

(b) Deferred applications shall be placed on public notice in the next appropriate CON newsletter;

(c) If an application is deferred, an applicant may update its application by providing additional information to the cabinet up to six (6) days prior to the date that the deferred application is placed on public notice;

(d) In order for a hearing to be held on a deferred application, a hearing must be requested by either the applicant or an affected person within fifteen (15) days of the deferred application being placed on public notice.

(8)(a) An applicant may withdraw an application for certificate of need at anytime prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application. If a hearing has been scheduled or held on the application, the applicant shall also notify known affected persons in writing of the applicant's decision to withdraw the application.

(b) If an application is withdrawn, the applicant shall file a new letter of intent before resubmitting the application.

Section 5. Review of Certificate of Need Application. (1) Batching review cycles shall be as follows:

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| Type of Proposal | Applications shall be filed by third Wednesday of: | Month of public notice, ninety (90) days prior to decision date: | Month and day of decision, third Wednesday of: |
|---|--|--|--|
| (a) Hospital, psychiatric, rehabilitation, chemical dependency and psychiatric residential treatment facilities, freestanding ambulatory surgical center, birthing center. | October, January, April, July | November, February, May, August | February, May, August, November |
| (b) Skilled nursing, nursing home, intermediate care, personal care, nursing facility, and Intermediate Care, Mental Retardation, and Developmentally Disabled facility. | November, May | December, June | March, September |
| (c) Transplantation, magnetic resonance imaging, lithotripter, radiation therapy, cardiac catheterization, open heart surgery, and new technological developments | December, June | January, July | April, October |
| (d) Day health care center, ambulatory care clinic, rehabilitation agency, hospice, home health or home health/hospice | October, January, May, July | November, February, June, August | February, May, September, November |
| (e) Ambulance and air ambulance providers. | November, January, April, June, August | December, February, May, July, September | March, May, August, October, December |
| (f) All mobile services except those covered under specialized equipment and services | October, December, February, April, June, August | November, January, March, May, July, September | February, April, June, August, October, December |
| (g) Any proposals not listed above shall be placed in the most appropriate cycle as determined by the cabinet. | | | |
| (h) Any proposals granted nonsubstantive review status as specified in KRS 216B.095(3)(a) (b)(c)(d)(e)(f) shall be processed in accordance with KRS 216B.095(1) | | | |
| <p>(2) The cabinet shall notify the applicant by certified mail, and any party to the proceeding by regular mail, of the final action on a certificate of need application.</p> <p>(3) Written notification of approval shall include:</p> <p>(a) Verification that the criteria have been met;</p> <p>(b) If the application is inconsistent with any criteria, the reasons for approval despite the inconsistency; and</p> <p>(c) Notice of appeal rights;</p> <p>(d) The amount of capital expenditure authorized, where applicable.</p> | | | |
| <p>ble.</p> <p>(4) Written notification of disapproval shall include:</p> <p>(a) The reason for the disapproval; and</p> <p>(b) Notice of appeal rights.</p> <p>(5) An application that is not declared complete within a year from the date of filing shall expire and shall not be reviewed.</p> <p>(6) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months, absent a showing of a significant change in circumstances, as determined by the cabinet.</p> | | | |

Section 6. Certificate of Need Hearings. (1) The applicant or any affected person may request a hearing on an application. Notice of hearing shall be mailed to the applicant and parties requesting the hearing not less than ten (10) days before the date of the hearing.

(2) The cabinet or its designee shall provide notice of the date, time, and location of the hearing to members of the general public through public information channels:

(3)(a) A hearing request may be withdrawn by written request filed with the cabinet and shall be accepted if it is received by the cabinet at least three (3) working days before the scheduled hearing date.

(b) A public hearing shall be canceled if all persons who requested the hearing agree in writing to its cancellation; agreement of other affected persons shall not be required.

(4) The cabinet or its designee may convene a preliminary conference. The purposes of the conference are to formulate and simplify the issues, identify additional information and evidence needed for the hearing, and dispose of pending motions. A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record. The cabinet or its designee may tape record the conference or have a stenographer present. During the preliminary conference, the cabinet may:

(a) Instruct the parties and others who have indicated an intent to participate in the hearing to:

1. Formulate and submit a list of genuine contested issues to be decided at the hearing;

2. Raise and address issues that can be decided before the hearing;

3. Formulate and submit stipulations to facts, laws, and other matters.

(b) Prescribe the manner and extent of the participation of the parties or persons who shall participate;

(c) Rule on any pending motions for discovery or subpoenas;

(d) Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(5) Five (5) working days prior to any scheduled hearing, all persons wishing to participate as a party to the proceedings shall file two (2) copies of the following with the cabinet and serve copies on all known affected parties:

(a) Witness List (Form #3);

(b) Exhibit List (Form #4) and attached exhibits;

(c) Notice of Appearance (Form #5).

(6) Public hearing. A hearing officer designated by the cabinet shall convene the hearing. In no event shall a hearing officer act on any application in which he has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(7) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Every party appearing at the hearing shall enter an appearance by stating their name and address.

(8) Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(a) The hearing officer may allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed. He may act to exclude irrelevant, immaterial or unduly repetitious evidence, and may question any party or witness.

(b) The hearing officer is not bound by the Kentucky rules of

evidence and may allow hearsay evidence in his discretion if it is relevant to the issue.

(c) The applicant may be allowed to open and close the presentation of evidence and arguments. The hearing officer shall designate the order of presentation of proof in the preliminary order.

(d) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If the hearing officer determines that the hearing will be expedited and the interests of the parties will not be prejudiced, any part or all of the evidence may be received in written form. Written testimony of a witness in the form of questions and answers or a narrative statement may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.

(e) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original. Documents to be considered for acceptance shall be filed with the hearing officer and other parties at least five (5) working days before the hearing.

(f) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any reference document shall be precisely identified.

(g) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(9) Upon agreement of the applicant, the hearing officer may continue a hearing beyond the ninety (90) day review cycle established by KRS 216B.062(1).

(10) The cabinet shall forward a copy of the hearing officer's final decision by certified mail to each party. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 7. Requests for Reconsideration. (1) The hearing officer shall act upon requests for reconsideration filed pursuant to KRS 216B.090 within thirty (30) days following receipt of a request.

(2) If reconsideration is granted, a hearing before a hearing officer designated by the cabinet shall be held within thirty (30) days of the decision, and a final decision by the hearing officer shall be issued no later than thirty (30) days following the hearing.

Section 8. Conditions Relative to Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (f), the following proposals may be granted nonsubstantive review status:

(a) Technical modifications to an approved certificate of need;

(b) Emergency circumstances. An applicant acting under this subsection may proceed to relieve any emergency circumstances as defined in Section 1(3) of this administrative regulation provided the cabinet is notified in writing prior to the action, and an applications submitted within thirty (30) days of the date of receipt of written notice by the cabinet.

(2) Applicants requesting nonsubstantive review shall submit an original certificate of need application and two (2) copies to the cabinet. A letter of intent shall not be required.

(3) Within fifteen (15) days of the receipt of the application, the cabinet shall:

(a) Declare the application complete and so notify the applicant; or

(b) Request the specific additional information needed to complete the application.

(4) If additional information is requested, the applicant shall:

(a) Submit the additional information requested; or

(b) Notify the cabinet that its application shall be processed as submitted.

(5) Upon receipt of the additional information or the applicant's notice to process the application as submitted, the cabinet shall declare the application complete and so notify the applicant.

(6) A decision to grant or deny nonsubstantive review status shall be made by the cabinet within ten (10) days of the date the application is declared complete.

(a) If nonsubstantive review status is granted, notice of the decision shall be given to all known affected persons;

(b) If nonsubstantive review status is denied, the application shall automatically be placed in the formal review process.

(7) If an application is granted nonsubstantive review status, any affected person other than the applicant may request a hearing by filing a request for hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(8) If a hearing is held, the following issues may be raised at the hearing:

(a) Whether the applicant is entitled to nonsubstantive review status;

(b) Whether the proposed facility or service is required; and

(c) Whether the capital expenditure proposed is consistent with the State Health Plan.

(9) Where a hearing is not held, applications granted nonsubstantive review status shall be approved for a certificate of need unless the cabinet finds:

(a) That the proposed facility or service is not required; or

(b) That to the extent the proposed facility or service is addressed in the State Health Plan, the capital expenditure is not consistent with the State Health Plan.

(10) Where a hearing is held, applications granted nonsubstantive review status may be approved for a certificate of need unless the cabinet finds:

(a) That nonsubstantive review status should not have been granted; or

(b) That the facility or service with respect to which the capital expenditure is proposed to be made is not required; or

(c) That to the extent the facility or services contemplated by the proposed capital expenditure is addressed in the State Health Plan, the capital expenditure is not consistent with the State Health Plan.

(11) If a certificate of need is denied following a nonsubstantive review and the applicant requests a formal review, the filing of the request for nonsubstantive review shall be considered to constitute compliance with any requirement for a letter of intent. The applicant shall provide all information requested in the application that pertains to the formal review process no later than the relevant deadline as provided in Section 5 of this administrative regulation.

Section 9. Show Cause Hearings. (1) A hearing officer designated by the cabinet may conduct a show cause hearing in order to determine whether there has been a violation of KRS Chapter 216B or these administrative regulations, and may assess penalties if willful violations are found.

(2) Prior to convening a show cause hearing, the cabinet or its designee shall give the person alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing. The notice shall advise the person of the allegations against him, of any facts determined to exist which support the existence of the allegation, and the statute or administrative regulation alleged to have been violated.

(3) A hearing officer shall convene the hearing and shall allow the person to establish through testimony or other evidence any grounds in support of its position that no action should be taken by the cabinet.

(4) Within ten (10) days of the conclusion of the hearing, the hearing officer shall issue a final decision on the matter. A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

Section 10. Administrative Escalations. (1) No person may obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on Form #6 (Administrative Escalation).

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits provided there is not a substantial change in the project:

(a) \$100,00, if the capital expenditure authorized on the certificate of need is less than \$500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is \$500,000 to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects where the capital expenditure authorized on the certificate of need is \$5,000,000 to \$24,999,999;

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, where the capital expenditure authorized on the certificate of need is \$25,000,000 to \$49,999,999;

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, where the capital expenditure authorized on the certificate of need is \$50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section, shall constitute a substantial change in a project and shall require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be presumed to be a willful violation of KRS Chapter 216B and shall be subject to the penalties set forth at KRS 216B.990(2).

Section 11. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on "Progress Report Form #8" at the six (6) month intervals specified in this section.

(2)(a) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented;

(b) The cabinet or its designee shall review a progress report and shall:

1. Determine whether the required elements have been completed; and

2. If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(3) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Division of Licensing and Regulation;

(b) A final cost breakdown has been submitted; and

(c) Documentation that services are being provided to all of the licensed service area has been submitted.

(4) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(5)(a) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder, or were not the result of action or inaction of the holder.

(b) If the cabinet determines that required elements have not been completed for reasons other than those set forth in paragraph (a) of this subsection, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(c) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing to show cause why the certificate of need should not be revoked.

(6) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment shall provide plans for implementation of the project;

(b) Projects for the purchase of equipment only: a copy of the purchase order;

(c) Projects involving the acquisition of real property: evidence of an option to acquire the site;

(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(7) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation or the Emergency Medical Services Branch; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(8) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, where applicable;

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(9) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and evidence that construction has begun.

(10) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(11) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and, if required that the appropriate license has been approved for the health care service or facility.

(12) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the

certificate holder that the project will be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(13) For projects involving long-term care beds:

(a) The first progress report shall include:

1. Copy of deed or lease of land for projects requiring acquisition of real property;

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed;

2. For construction projects:

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

d. Enforceable construction contract.

(14) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion;

(15) For projects not involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensure and Regulation.

(16) The cabinet or its designee may grant no more than two (2) extensions of six (6) months for good cause shown when the certificate holder of long-term care beds has failed to comply with the above relevant progress report requirements;

(17)(a) Within six (6) months following licensure of a project for which a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided;

(b) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

Section 13. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine that they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review will be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) The cabinet or its designee shall notify the certificate of need holder of any finding that it is not in compliance with the terms of its certificate of need, and shall provide the certificate of need holder with a reasonable period of time in which to demonstrate a good faith effort to remedy the specified deficiencies.

(5) The cabinet may institute disciplinary proceedings, including but not limited to revocation of the certificate of need for willful failure to comply with the terms of the certificate of need as determined by a biennial review.

(6) The cabinet shall notify the Division of Licensing and Regulation of any adverse findings under this subsection.

Section 14. Advisory Opinions. (1) Requests for advisory opinions shall be completed on Form Number 9 (Advisory Opinion).

(2) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(3) The cabinet or its designee may require verification of information and request additional documentation.

(4) The cabinet or its designee shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(5) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter and disseminated through public information channels.

(6) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion. The public hearing shall be conducted in accordance with the provisions of Section 6 of this administrative regulations. If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet. Failure to request a public hearing shall not constitute a failure to exhaust administrative remedies.

Section 15. Material Incorporated by Reference. (1) The following forms necessary for the administration of the certificate of need program are hereby incorporated by reference:

(a) Letter of Intent (Form #1).

(b) Certificate of Need Application (Form #2A).

(c) Certificate of Need Application for Ground Ambulance and Air Ambulance Service Providers (Form #2B).

(d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C).

(e) Witness List (Form #3).

(f) Exhibit List (Form #4).

(g) Notice of Appearance (Form #5).

(h) Cost Escalation (Form #6).

(i) Six (6) Month Progress Report (Form #7).

(j) Advisory Opinion Request (Form #8).

(k) Acquisition of a Health Facility, Notice of Intent (Form #9).

(2) These forms may be inspected and copied at the Cabinet for Health Services, 275 E. Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: This administrative regulation will affect health care facilities and services associated with the certificate of need process.

(2) Direct and indirect cost or savings to those affected: This administrative regulation will have a minimal effect on costs to those entities affected. The regulation is designed to clarify and simplify the certificate of need process, and does not impose any new provisions that will affect costs in a significant way.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None. No public comments were received as a result of the Notice of Intent hearing regarding cost of living or employment.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: Undetermined. Although public comment was received regarding the high cost of preparing certificate of need applications and participating in certificate of need hearings, such costs were not quantified.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: These clarified regulations will make it easier for the administrative body to administer the certificate of need process.

(a) Direct and indirect cost or savings:

1. First year: When the Health Policy Board was abolished, appropriated funds were transferred to the cabinet to cover the costs of this function.

2. Continuing cost or savings: Staff and operating costs will continue.

3. Additional factors increasing or decreasing costs: Costs could vary depending on the number of certificate of need applications received.

(b) Reporting and paperwork requirements: This administrative regulation makes only minor changes to the reporting and paperwork requirements of the certificate of need process.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds were transferred from the Health Policy Board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will not alter the economic impact of the certificate of need process in any one geographic area.

(b) Kentucky: None. No comments were received on this issue at the Notice of Intent hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. The certificate of need process is required by KRS Chapter 216B.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Cabinet for Health Services to carry out its certificate of need mandates.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: The cabinet is required by state KRS Chapter 216B to promulgate certificate of need regulations. Failure to promulgate this administra-

tive regulation would leave the cabinet without administrative regulations to administer the certificate of need process.

(9) 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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied as the certificate of need process is applied uniformly for all of those entities that apply.

**CABINET FOR HEALTH SERVICES
Office of Certificate of Need
(New Administrative Regulation)**

900 KAR 6:020. Certificate of need application fee schedule.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990(2)

STATUTORY AUTHORITY: KRS 13A.050, 216B.040, 1996 Ky. Acts ch. 371, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040 authorizes the Cabinet for Health Services to establish, by administrative regulation, and collect reasonable application fees for certificates of need. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and creates the Office of Certificate of Need under the Cabinet for Health Services. This administrative regulation provides a fee schedule for certificate of need applications.

Section 1. (1) Certificate of need applications not proposing a capital expenditure or proposing a capital expenditure of \$0 - \$49,999 shall be assessed an application fee of \$100.

(2) Certificate of need applications which propose a capital expenditure of \$50,000 - \$500,000 shall be assessed an application fee at a rate of .002 of the capital expenditure.

(3) Certificate of need applications which propose a capital expenditure of \$500,001 - \$10,000,000 shall be assessed a base fee of \$1,000 plus an additional fee of .001 of the capital expenditure.

(4) Certificate of need applications which propose a capital expenditure of \$10,000,001 and above shall be assessed a base fee of \$6,000 plus an additional fee of .0005 of the capital expenditure.

Section 2. All Fees Shall be Computed to the Nearest Dollars. Application fees shall be submitted with the application. Applications shall not be deemed complete until the application fee has been paid. Application fees shall be refunded only if notice of withdrawal of the application is received by the cabinet within five (5) working days of the date the application is received by the Cabinet for Health Services.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: This administrative regulation will affect all health care facilities and services who file applications for certificate of need.

(2) Direct and indirect cost or savings to those affected: This administrative regulation makes nonsubstantive changes to the existing fee schedule.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None. No public comments were received.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: None. No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: When the Health Policy Board was abolished, appropriated funds were transferred to the cabinet to cover the costs of this function.

2. Continuing cost or savings: Staff and operating costs will continue.

3. Additional factors increasing or decreasing costs: Costs could vary depending on the number of certificate of need applications.

(b) Reporting and paperwork requirements: Fees are submitted along with certificate of need applications. CON Office prepares transmittal letter for deposit of funds.

(4) Assessment of anticipated effect on state and local revenues: The effect of this administrative regulation on state revenues depends on the number of applications.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds have been transferred from the Health Policy Board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None. No public comments were received.

(b) Kentucky: None. No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. Fees are required by statute.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Cabinet for Health Services to collect fees.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Failure to promulgate this administrative regulation would cause the cabinet to delay collecting fees which would affect revenues.

- (9) 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: None
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied as the certificate of need process is applied uniformly for all of those entities that apply.

CABINET FOR HEALTH SERVICES
Office of Certificate of Need
(New Administrative Regulation)

900 KAR 6:030. Certificate of need expenditure minimums.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 216B.040, 216B.130, 1996 Ky. Acts ch. 371, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040 authorizes the Cabinet for Health Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to annually adjust expenditure minimums provided in KRS Chapter 216B. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and creates the Office of Certificate of Need under the Cabinet for Health Services. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment for the period beginning July 15, 1996 and ending July 14, 1997.

Section 1. (1) Expenditure minimums or limits provided in KRS Chapter 216B and administrative regulations promulgated pursuant thereto shall be adjusted for the twelve (12) month period beginning July 15, 1996 and ending July 14, 1997 to reflect the changes in the preceding year.

(2) The U.S. Department of Commerce, Bureau of Census implicit price deflator for construction shall be used in making these adjustments. The change in the deflator for the twelve (12) month period ending January, 1996 represents a four and one-half (4.5) percent increase.

Section 2. The expenditure minimums provided in KRS Chapter 216B shall be increased for the twelve (12) month period from July 15, 1996 to July 14, 1997 as follows:

(1) The expenditure minimum of \$1,500,000 for capital expenditure shall be increased to \$1,567,500.

(2) The expenditure minimum of \$1,500,000 for major medical equipment shall be increased to \$1,567,500.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: This administrative regulation will affect health care facilities and services associated with the certificate of need expenditure minimums.

(2) Direct and indirect cost or savings to those affected: This administrative regulation has no substantive changes. It places the responsibility of adjusting expenditure minimums with the Cabinet for Health Services instead of the Health Care Policy Board. The administrative regulation is intended to contain health care costs.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None. No public comments were received.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: None. No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be additional costs to the cabinet.

(a) Direct and indirect cost or savings:

1. First year: When the Health Policy Board was abolished, appropriated funds were transferred to the cabinet to cover the costs of this function.

2. Continuing cost or savings: Staff and operating costs will continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applications will be reviewed to determine whether they exceed minimum expenditure thresholds.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds were transferred from the Health Policy Board. Fees will be paid by applicants for certificates of need.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None. No public comments were received.

(b) Kentucky: None. No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Annual adjustment of expenditure thresholds is required by statute.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Cabinet for Health Services to adjust the expenditure minimums for capital expenditures and major medical equipment for a set time frame.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect:

Without this administrative regulation, the Cabinet for Health Services would not be allowed to adjust expenditure minimums as required by statute which could have a detrimental effect on services.

(9) 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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied as the certificate of need process is applied uniformly for all of those entities that apply.

CABINET FOR HEALTH SERVICES
Office of Certificate of Need
(New Administrative Regulation)

900 KAR 6:040. Licensure hearings.

RELATES TO: KRS 216B.105

STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 1996 Ky. Acts ch. 371, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040 and 216B.105 authorize the Cabinet for Health Services to provide a due process hearing and issue a final determination on all actions by the Cabinet for Health Services to deny, revoke, modify or suspend a license. Executive Order 96-862 reorganizes the Cabinet for Human Resources and creates the Office of Certificate of Need under the Cabinet for Health Services. This administrative regulation sets forth the hearing procedure for licensure actions.

Section 1. Notice of Action and Request for Hearing. Any applicant or licensee who has been notified of the cabinet's decision to deny, revoke, modify or suspend a license to operate a health facility or health service may request an evidentiary hearing for the purpose of appealing the cabinet's decision. The request must be filed with the cabinet within thirty (30) days of the date of mailing of notice of the cabinet's decision.

Section 2. Notice of Hearing. The cabinet shall provide the appellant with notice of date, time and location of the hearing by certified mail at least thirty (30) days before the date of the hearing.

Section 3. Disqualification of Hearing Officer. No hearing officer shall participate in any hearing in which he or she has had within the past twelve (12) months preceding the hearing, any ownership, employment, staff, fiduciary, contractual, creditor, personal, or consultative relationship with the applicant or licensee.

Section 4. Hearing Procedure. (1) Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(a) The hearing officer may allow testimony or other evidence on issues that may arise during the course of the hearing, including any additional petitions for intervention which may be filed. The hearing officer may act to exclude irrelevant, immaterial or unduly repetitious evidence, and may question any party or witness.

(b) The hearing officer is not bound by the Kentucky rules of evidence and may allow hearsay evidence in his discretion if it is relevant to the issue.

(c) The applicant or licensee may be allowed to open and close the presentation of evidence and arguments. The hearing officer shall designate the order of presentations, in the preliminary order.

(d) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If the hearing officer determines that the hearing will be expedited and the interests of the parties will not be prejudiced, any part or all of the evidence may be received in written form. Written testimony of a witness in the form of questions and answers or a narrative statement may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.

(e) A written statement from any party, or a statement or resolution of a political subdivision, trade association, civic organization or other organization may be received without cross examination, but will be considered only as argument, and not as proof of any matter addressed in these documents unless the party against whom the document is being offered is allowed to cross-examine the proponent of the document.

(f) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original. Documents to be considered for acceptance shall be filed with the hearing officer and other parties at least seven (7) days before the hearing.

(g) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any reference document shall be precisely identified.

(h) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time, not to exceed the ten (10) days after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(2) In lieu of an evidentiary hearing, the parties to a proceeding, with the consent of the designated hearing officer, may file written stipulations of relevant facts. The hearing officer may decide the appeal on the basis of such stipulation or may schedule a hearing and take such further evidence as he deems necessary.

(3) The designated hearing officer may, at his discretion, grant a continuance of a hearing in order to secure necessary evidence.

Section 5. Findings and Recommendations. (1) After the hearing, the hearing officer shall prepare written findings of fact and recommendations with a synopsis of the evidence contained in the record on the issues involved. If the applicant or licensee fails to appear and prosecute the appeal, the hearing officer may dismiss or recommend dismissal of the appeal.

(2) The hearing officer shall, within twenty (20) days of the close of the hearing send findings and recommendations by certified mail to the applicant or licensee, to the licensing agency, and to the Secretary of the Cabinet for Health Services. Written exceptions to the recommended decision may be submitted within seven (7) days of receipt.

(3) The Secretary of the Cabinet for Health Services shall make a final decision pursuant to subsection (2) of this section after review of any written exceptions filed.

(4) The decision of the secretary shall be final for purposes of judicial appeal, as set forth in KRS 216B.115.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East

Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: This administrative regulation will affect all licensed health facilities.

(2) Direct and indirect cost or savings to those affected: This regulation assigns no direct costs to licensed health facilities.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None. No comments were received.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: None. No comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: When the Health Policy Board was abolished, appropriated funds were transferred to the cabinet to cover the costs of this function.

2. Continuing cost or savings: Staff and operating costs will continue.

3. Additional factors increasing or decreasing costs: Costs will vary depending on the number of licensure hearings conducted.

(b) Reporting and paperwork requirements: Hearing notices, hearing reports and final decisions will be required.

(4) Assessment of anticipated effect on state and local revenues: The effect on state and local revenues depends on the number of licenses denied, revoked, modified or suspended.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds have been transferred from the Health Policy Board to the Cabinet for Health Services.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None. No comments were received.

(b) Kentucky: None. No comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. KRS 216B.105 mandates licensure revocation hearings.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Cabinet for Health Services

to provide due process hearings which will improve health care delivery and help contain costs.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: If due process hearings were not conducted health care costs could escalate and the quality of health care would suffer.

(9) 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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied as the certificate of need due process will be available to all regulated entities.

CABINET FOR HEALTH SERVICES Department for Health Services (New Administrative Regulation)

902 KAR 17:030. State Health Plan.

RELATES TO: KRS 216B.010 to 216B.130

STATUTORY AUTHORITY: KRS 216B.015(18), 1996 Ky. Acts ch. 371, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health and its programs under the Cabinet for Health Services. KRS 216B.015(18) requires the Cabinet for Health Services to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in 1996 Ky. Acts ch. 371.

Section 1. Incorporation by Reference. (1) The 1996-1998 Kentucky State Health Plan is hereby incorporated by reference.

(2) This document may be inspected, copied, or obtained at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m. Monday through Friday.

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: October 2, 1996

FILED WITH LRC: October 10, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1996, at 9 a.m., in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by November 14, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Kendell, Branch Manager

(1) Type and number of entities affected: This administrative regulation will affect all state agencies and entities that may contribute to preparing the State Health Plan.

(2) Direct and indirect costs or savings to those affected: There should be no direct costs or savings to those affected as the administrative regulation merely changes responsibility for preparing the State Health Plan from the Kentucky Health Policy Board to the

Cabinet for Health Services.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent hearing.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent hearing.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be additional costs to the cabinet.

(a) Direct and indirect costs or savings:

1. First year: When the Health Policy Board was abolished, appropriated funds were transferred to the cabinet to cover the costs of this function.

2. Continuing costs or savings: Staff and operating costs will continue.

3. Additional factors increasing or decreasing costs: Costs could vary as future decisions are made concerning content and scope of the State Health Plan.

(b) Reporting and paperwork requirements: The Cabinet for Health Services will assume the reporting and paperwork requirements associated with the Certificate of Need process.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds were transferred from the Health Policy Board to the Cabinet for Health Services.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the Notice of Intent hearing.

(b) Kentucky: To be determined after the Notice of Intent hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. The 1996 General Assembly transferred this function to the Cabinet for Health Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Cabinet for Health Services to carry out its health planning mandates and to ensure that policy concerns relating to statewide public and environmental health are addressed.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Failure to promulgate this administrative regulation would cause the cabinet to delay developing a state health plan. In addition, the 1996 General Assembly required this transition to be effective July 15, 1996.

(9) 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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not applied as all regulated entities will be required to abide by the guidelines of the State Health Plan.

CABINET FOR HEALTH SERVICES
Department for Health Services
(New Administrative Regulation)

902 KAR 17:040. Data reporting by health care providers.

RELATES TO: KRS 216.2920 to 216.2929

STATUTORY AUTHORITY: 216.2925, Ky. Acts ch. 371, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 216.2925 and 1996 Ky. Acts ch. 371 mandate the Cabinet for Health Services to promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality and outcomes of health care services provided in the Commonwealth. This administrative regulation sets forth the data elements, forms, and timetables the cabinet requires to carry out this mandate.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(2) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay and discharge date, and further identified by a provider-assigned patient control number unique to that inpatient episode. Excluded from this definition are inpatient services a hospital may provide in swing, dual licensed, nursing facility, skilled, intermediate or personal care beds, hospice, and major ambulatory procedures notwithstanding that these may occur in hospitals.

(3) "Major ambulatory procedure" means the provision to an ambulatory patient of any ambulatory surgery, any cardiac catheterization, or any patient service using lithotripsy, magnetic resonance imaging or megavoltage radiation by linear accelerator or cobalt 60. Major ambulatory procedures may be related or unrelated to hospitalizations, may involve the use of either fixed or mobile medical equipment, and may occur in a physician office, a clinic, a hospital emergency, ambulatory or outpatient department by any name, or any other noninpatient situation or location where a major ambulatory procedure is provided.

(4) "Selected ambulatory surgery" means the following specific surgeries:

| | |
|---|---|
| Dilation and curettage | Myringotomy with or without ventilation tubes |
| Hernia repair | Colonoscopy |
| Gastroscopy | Cystoscopy with or without retrograde urography |
| Bronchoscopy | Tubal ligation |
| Vasectomy | Cataract surgery |
| Laser surgery (eye) | Arthroscopy |
| Angioplasty | Septoplasty |
| Hemorrhoid surgery | Lymph node biopsy |
| Colposcopy with or without conization | Breast biopsy |
| Laparoscopic cholecystectomy | Carpal tunnel release |
| Arteriogram with or without angioplasty | Tonsillectomy |

(5) "UB-92" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1450, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations and ambulatory encounters, as incorporated by reference in Section 9 of

this administrative regulation.

(6) "HCFA-1500" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1500, approved by the American Medical Association Council on Medical Service and commonly used to bill for ambulatory patient encounters, as incorporated by reference in Section 9 of this administrative regulation.

(7) "Coding and transmission specifications" means the technical directives the cabinet issues concerning technical and technological matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the UB-92 and HCFA-1500 and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(8) "Record" means the documentation of a hospitalization or major ambulatory procedure in the format of a UB-92 or HCFA-1500 regardless whether constituted as a paper form or on a computer readable electronic medium.

(9) "Agent" means any entity with which the cabinet may contract pursuant to carrying out its statutory mandates and may designate to act on behalf of the cabinet to collect, edit or analyze data from providers.

(10) "Provider" means a hospital, ambulatory facility, physician office, clinic or other entity of any nature providing hospitalizations or major ambulatory procedures as defined in this administrative regulation.

Section 2. Data Collection. (1) Hospitalization records. Beginning January 1, 1995, hospitals shall document on a UB-92 record each hospitalization they provide, and shall from every record copy and provide to the cabinet or its agent not less than the data specified in Section 7 of this administrative regulation.

(2) Major ambulatory procedure and mammography records.

(a) Beginning January 1, 1995, ambulatory facilities and hospitals providing major ambulatory procedures or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the cabinet, every major ambulatory procedure and mammogram they provide, and shall from every record copy and provide to the cabinet or its agent not less than the data specified in Section 7 of this administrative regulation.

(b) Beginning July 1, 1995, physician offices, clinics and other entities of any nature providing major ambulatory procedures or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the cabinet, the major ambulatory procedures and mammograms they provide, except that reporting of surgeries shall be limited to selected ambulatory surgeries as defined in this administrative regulation, and shall from every record copy and provide to the cabinet or its agent not less than the data specified in Section 7 of this administrative regulation.

(3) Data collection on all patients. Providers shall submit all required data on every patient as provided in this administrative regulation, regardless whether a bill is to be generated or the services are to remain unbilled.

Section 3. Data Finalization and Submission. (1) Submission of final data. Data shall be deemed final for purposes of submission to the cabinet or its agent as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless whether the record has actually been submitted to a payor.

(a) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(b) Data on hospitalizations shall not be submitted to the cabinet or its agent before a patient is discharged or before the record is sufficiently final that it could be used for billing.

(2) Submission responsibility.

(a) When a patient is served by a mobile health service, specialized medical technology service, or other situations where one provider provides services under contract or other arrangement with

another provider, responsibility for providing the specified data to the cabinet or its agent shall reside with the entity that bills for the service or otherwise would do so in the event a service is unbilled.

(b) All charges for physician services occurring within a hospital shall be reported to the cabinet. Responsibility for reporting the physician charge data shall rest with the hospital only when the physician is an employee of the hospital. Any physician charge(s) contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating them with other hospital records that do not contain any physician charges.

(3) Transmission of records.

(a) Data submitted to the cabinet or its agent shall be uniformly completed and formatted according to coding and transmission specifications issued by the cabinet.

(b) Hospitals shall submit data on computer-readable electronic media, and all other providers with capability to submit records on computer-readable electronic media shall do so.

(c) All providers shall provide back-up security against accidental erasure or loss of the data until incomplete or inaccurate records identified by the cabinet, if any, have been corrected and resubmitted.

(d) Any data submitted by mail shall be by registered mail.

(e) Any provider who submits records in the form of paper copies shall either deliver the copies to the cabinet or its agent, or send them in secure packaging by mail postmarked no later than the due date.

(f) Personal identification fields including the patient's name, Social Security number, street address and four (4) digit Zip code suffix if any (but not city or five (5) digit Zip code) shall be rendered unreadable on paper copies before the copies are submitted to the cabinet, and shall not be included with electronically submitted data.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of all data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet or its agent shall periodically, by electronic message or mail, verify to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of any discrepancy between the provider's date log and a verification notice.

Section 4. Data Submission Timetable. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall contain data, from all records of patients admitted on or after January 1, 1995, which during that quarter became final as specified in Section 3(1) of this administrative regulation, and shall be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

(a) If the 45th day falls on a weekend or holiday the submission due date shall become the next following working day.

(b) Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(c) The date for the first required data submission under this administrative regulation shall be, for quarterly data collected after January 1, 1995, sixty (60) days following official release of the cabinet's coding and transmission specifications.

(2) Submissions more frequent than quarterly. Providers may submit data at any time after records become final as specified in Section 3(1) of this administrative regulation, and at any frequency each provider deems convenient for accumulating and submitting batch data.

Section 5. Data Corrections. (1) Editing. All data received by the cabinet or its agent will upon receipt be edited to ensure completeness and validity of the data for further processing. Computer editing routines will identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding

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and transmission specifications.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet or its agent identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by either electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the cabinet or its agent shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications.

(d) During the start-up months between January 1, 1995 and September 30, 1995, the cabinet may in its discretion grant a provider an extension of time to submit corrections, provided that the provider has informed the cabinet of significant problems in performing the corrections and has formally requested an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet or its agent shall identify and return to the provider for correction every record in which any one (1) or more required data elements fails to pass the edit, and shall count the total number of required data elements returned to be corrected as 100 percent of the data elements for that submission subject to correction by the provider.

(b) When editing data that a provider has submitted, the cabinet or its agent shall check for an error rate in each field of no greater than two (2) percent of the total data elements.

(c) The cabinet may return for further correction(s) any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate of ninety-eight (98) percent or greater in each field of the data elements.

(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days following official release of coding and transmission specifications.

(4) Postsubmission data changes. A provider shall initiate, as a correction, a resubmission of data previously submitted to the cabinet if at any time up to six (6) months after the original submission date the provider issues a rebilling in which the rebilled record contains one (1) or more changes from the originally submitted data as follows:

(a) Any change which constitutes an aggregate change of the originally submitted total charge by at least three (3) percent or \$500, whichever is greater, if a hospitalization; or ten (10) percent or \$100, whichever is greater, if an ambulatory encounter; or

(b) Any change of or addition to primary or secondary diagnoses or procedures.

Section 6. Working Contacts. (1) Beginning January 20, 1995 and annually thereafter by January 1, each provider who is required by this administrative regulation to submit data shall report by letter to the cabinet the names and telephone numbers of a designated working contact person and a back-up person to facilitate technical staff follow-up in dealing with daily working details by employees of the cabinet or its agent. A provider's designated contact and back-up may not be the chief executive officer unless no other person(s) employed by the provider has the requisite technical expertise.

(2) If the chief executive officer, designated contact person or back-up person changes during the year the name of the replacing person shall be reported immediately to the cabinet.

Section 7. Required Data Elements. (1) UB-92 data. Providers shall ensure that each copy of UB-92 data submitted to the cabinet contains at least the following data elements as provided for on the UB-92 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications.

| Field # | Data Element Label |
|---------|---|
| 2 | * Ethnicity |
| 3 | * Provider Assigned Patient Control Number |
| 4 | * Type of Bill (inpatient, outpatient or other) |
| 5 | * Federal Tax Number or Employer Identification Number (EIN) |
| 6 | * Statement Covers Period |
| 11 | Patient Birth Weight (state-reserved field) |
| 13 | * Patient City and Zip Code |
| 14 | * Patient Birth date |
| 15 | * Patient Sex |
| 16 | Patient Marital Status |
| 17 | * Admission/Start of Care Date |
| 18 | Admission Hour |
| 19 | * Type of Admission |
| 20 | * Source of Admission |
| 21 | Discharge Hour |
| 22 | * Patient Status (at end of service or discharge) |
| 23 | * Provider Assigned Medical Record Number |
| 32-35 | Occurrence Codes & Dates |
| 36 | Occurrence Span Codes & Dates |
| 39-41 | Value Codes and Amounts |
| 42 | * Revenue Codes/Groups |
| 46 | Units of Service |
| 47 | * Total Charges by Revenue Code Category |
| 50 | * Payor Identification |
| 56 | KenPAC Authorization (Provider) Number |
| 67 | * Principal Diagnosis Code |
| 68-75 | Secondary and Other Diagnosis Codes |
| 76 | * Admitting Diagnosis Code |
| 77 | External Cause of Injury Code (E-code) |
| 78a | Unusual Occurrence: Readmission |
| 78b | Unusual Occurrence: Nosocomial Infection |
| 79 | * Procedure Coding Method Used |
| 80 | Principal Procedure Code & Date |
| 81 | Secondary and Other Procedure Codes & Date |
| 82 | * Attending Physician Unique Physician Identification Number (UPIN) or alternate number |
| 83 | Other Physician UPIN or alternate number |

(2) HCFA-1500 data. Providers shall ensure that each copy of HCFA-1500 data submitted to the cabinet contains at least the following data elements as provided for on the HCFA-1500 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications.

| Field # | Data Element Label |
|---------|---|
| 1 | * Payor Identification |
| 3 | * Patient Birth date and Patient Sex |
| 5 | * Patient City and Zip Code |
| 8 | Patient Marital Status |
| 10a | Patient Condition Related to Employment |
| 10b | Patient Condition Related to Auto Accident |
| 10c | Patient Condition Related to Other Accident |
| 14 | * Date of Current Illness, Injury, or Pregnancy |
| 15 | First Date of Previous Same/Similar Illness |
| 17a | * Referring/Ordering Physician UPIN or alternate number |
| 18 | Hospitalization Dates Related to Current Services |
| 19 | * Ethnicity |
| 20 | Outside Lab Use & Charges |
| 21 | * Diagnosis or Nature of Illness or Injury |
| 24a | * Date(s) of Each Procedure/Service/Supply |
| 24b | * Place of Service Code |

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- 24d * CPT/HCPCS Code for Each Procedure/
Service/Supply
- 24e Diagnosis Code
- 24f * Dollar Charges for Each Procedure/
Service/Supply
- 24g * Number of Days or Units
- 25 * Provider's (Physician/Supplier) Federal Tax
Identification Number (EIN)
- 26 * Provider (Physician/Supplier)-assigned Patient
Account Number
- 28 * Total Charges for Services

Section 8. Incorporations by Reference. (1) As defined in Section 1 of this administrative regulation, Form UB-92 and Form HCFA-1500 are incorporated by reference.

(2) These forms may be inspected or copied at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky, 40601, from 8 a.m. to 4:30 p.m., Monday through Friday except holidays.

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: October 2, 1996

FILED WITH LRC: October 10, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1996, at 9 a.m., in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by November 14, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Kendell, Branch Manager

(1) Type and number of entities affected: This administrative regulation will affect hospitals, freestanding or mobile facilities providing major ambulatory procedures, and physicians providing major ambulatory procedures in their offices.

(2) Direct and indirect costs or savings to those affected: This administrative regulation has no substantive changes. It places the responsibility of collecting data from specified health care providers with the Cabinet for Health Services instead of the Health Care Policy Board.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent hearing.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent hearing.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: There will be additional costs to the cabinet.

(a) Direct and indirect costs or savings:

1. First year: When the Health Policy Board was abolished, appropriated funds were transferred to the cabinet to cover the costs of this function.

2. Continuing costs or savings: cost of staff and computer system will continue.

3. Additional factors increasing or decreasing costs: Quantity of

data received and nature and quantity of reports produced will affect staff costs.

(b) Reporting and paperwork requirements: The Cabinet for Health Services will assume the reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds were transferred from the Health Policy Board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the Notice of Intent hearing.

(b) Kentucky: To be determined after the Notice of Intent hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods assessed. The 1996 General Assembly transferred this function to the Cabinet for Health Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Collection and publication of health care data should improve affordability of access to health care and improve the public health status of Kentucky citizens statewide.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Nonavailability of comparative health data for consumers is detrimental to the informed selection of health care services.

(9) 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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not applied as the requirement of data reporting will be required by all health care providers who meet the criteria in this administrative regulation.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (New Administrative Regulation)

904 KAR 2:470. Disability Determinations Program.

RELATES TO: KRS 194.030(6), 205.245, 20 CFR 401.100 - 401.600, Subparts A, B, C, E, F, 404.900 - 404.999d, Subpart J, 404.1501 - 404.159, Appendix 1 & 2, Subpart P, 404.1601 - 404.1694, Subpart Q, 416.901 - 416.998, Subpart I, 416.1001 - 416.1094, Subpart J, 416.1400 - 416.1499, Subpart N, 416.1701 - 416.1725, Subpart Q, 422.401 - 422.449, Subpart E

STATUTORY AUTHORITY: KRS 194.050, EO 96-862, 20 CFR 401.100 - 600, Subparts A, B, C, E, F, 404.900 - 404.999d, Subpart J, 404.1501 - 404.1599, Appendix 1 & 2, Subpart P, 404.1601 - 404.1694, Subpart Q, 416.901 - 416.998, Subpart I, 416.1001 - 416.1094, Subpart J, 416.1400 - 416.1499, Subpart N, 416.1701 - 416.1725, Subpart Q, 422.401 - 422.449, Subpart E

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862 transfers to the Cabinet for Families and Children the authority to administer a program under 20 CFR 404.1503 for determinations of disability. The Cabinet for Families and Children, Department for Social Insurance, Division of Disability Determinations shall make

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disability determinations for Social Security Disability and Supplemental Security Income.

Section 1. The following CFR sections, effective 4-1-96, govern disability determinations made by the Cabinet for Families and Children, Department for Social Insurance, Division of Disability Determinations:

- (1) 20 CFR 401.100 - 401.600, Subparts A, B, C, E, F;
- (2) 20 CFR 404.900 - 404.999d, Subpart J;
- (3) 20 CFR 404.1501 - 404.1599, Appendix 1 & 2, Subpart P;
- (4) 20 CFR 404.1601 - 404.1694, Subpart Q;
- (5) 20 CFR 416.901 - 416.998, Subpart I;
- (6) 20 CFR 416.1001 - 416.1094, Subpart J;
- (7) 20 CFR 416.1400 - 416.1499, Subpart N;
- (8) 20 CFR 416.1701 - 416.1725, Subpart Q;
- (9) 20 CFR 422.401 - 422.449, Subpart E.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1996, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1996, five working 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 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 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: William K. Moore, Jr., General Counsel, Cabinet for Families and Children, 275 East Main St., 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-3674.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The transferring of authority of the Disability Determinations Program from the Cabinet for Health Services to the Cabinet for Families and Children will have no fiscal impact to applicants or recipients of these programs who require a disability determination by the agency. This administrative regulation transfers the authority to administer the program to the Cabinet for Families and Children. This regular administrative regulation is promulgated to replace the emergency regulation signed on July 12, 1996.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or

paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fiscal impact will result for the Department for Social Insurance due to the transfer of the Disability Determinations Program from the Cabinet for Health Services. The overall revenue and expenditures (cost) will increase by the size of the program. Indirect costs for the department from the cabinet will increase because of the transfer. The Disability Determinations Program is 100 percent federally funded.

1. First year: 1997-\$26,377,900 increase in revenue and expenditures (cost) (federal funds).

2. Continuing costs or savings: 1998 - \$26,636,800 (cost).

3. Additional factors increasing or decreasing costs: Estimated \$1,056,000 increase in costs due to indirect costs for the department from the cabinet (federal funds).

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements, 20 CFR 404.1503, to administer a program for the determination of disability under the provisions of 42 USC 401-433, 42 USC 1381-1383d. The authority for the administration of the program is transferred from the Cabinet for Health Services to the Cabinet for Families and Children. This administrative regulation transfers the material found in 902 KAR 16:010.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The state is required to administer the program required under 20 CFR 404.1503 for the determination of disability under the provisions of 42 USC 401-433 and 42 USC 1381-1383d. Individuals who benefit from this program are persons who apply or receive benefits under Social Security, Supplemental Security Income Program, and State Supplemental Program who require a disability determination by the agency in order to receive eligible benefits based on disability. This administrative regulation is needed to comply with Executive Order 96-862 which transfers the Disability Determinations Program to the Department for Social Insurance.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: It is necessary to promulgate this administrative regulation to prevent the possible loss of federal funding (100 percent) due to the change in the authority over the administration of the program from the Cabinet for Health Services to the Cabinet for Families and Children.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

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(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
20 CFR 404.1503
2. State compliance standards. There is no state requirement for a Disability Determinations Program.
3. Minimum or uniform standards contained in the federal mandate. 20 CFR 404.1503 requires the state to administer a disability determinations program for determinations of disability under the provisions of 42 USC 401-433 and 42 USC 1381-1383d.
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 standards, or additional or different responsibilities or requirements. None

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? No
2. State what unit, part or division of local government this administrative regulation will affect.
3. State the aspect or service of local government to which this administrative regulation relates.
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:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 7, 1996

The October meeting of the Administrative Regulation Review Subcommittee was held on Monday, October 7, 1996, at 10 a.m. in Room 149 of the Capitol Annex. Representative Jimmy Lee, Acting Chairman, called the meeting to order, and the roll call was taken. The minutes of the September 9, 1996 meeting were approved.

Present were:

Members: Representative Jimmy Lee, Acting Chairman, Senators Nick Kafoglis, Joey Pendleton, Richard L. Roeding; Representatives Jim Bruce, Woody Allen.

LRC Staff: Greg Karambellas, Donna Little, Steve Lynn, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Kim Wilson, Don Hines.

Guests: Earl Mackey, Peggy Williams, Michael A. Bennett, Legislative Ethics Commission; Sarah Hite, Treasury; Daniel F. Egbers, Carol Palmore, Personnel Cabinet; W. Gayle Faust, Department of Parks; Angela Robinson, Karen Powell, Kim Blitch, Don Speer, Finance and Administration Cabinet; Carroll Roberts, Board of Hairdressers; Bob Bates, Tom Bennett, Pete Pfeiffer, Department of Fish and Wildlife Resources; Larry W. Hatfield, Danny Willis, Mark Farrow, Department of Agriculture; Gerry Ennis, Ken Hines, Division for Air Quality; David Waldner, Robert E. Nickel, David Wicker, Petroleum Storage Tank Environmental Assurance Fund; Sara M. Jackson, David L. Reichert, Division of Charitable Gaming; Robert Powell, Evelyn B. McKnight, Jack Damron, Tamela Biggs, Keith Hardison, Brenda Priestley, Department of Corrections; Gary L. Bush, Lt. Gerald A. Selection, Kentucky State Police; Rita Osborne, Ronda Tamme, Education Professional Standards Board; Rod Grassman, Katherine Heather Harker, Commission on the Deaf and Hard of Hearing; Beverly H. Haverstock, Linda Graves, Workforce Development Cabinet; Margaret Spencer Plattner, Pamela Farmer, Alcoholic Beverage Control; Eugene D. Attkisson, Department of Mines and Minerals; Robert Calhoun, Cookie Whitehouse; Cabinet for Health Services; Stephanie Craycraft, Michael Cheek, Dennis Corrigan, Ken Roten, R. Paer Stratton, Nelson Henson, D. W. Swain, Jeff Hinton, Cookie Whitehouse, Cabinet for Families and Children; Rocky M. Hall, J. C. Blanton, Ramey - Estep Homes; Marie Alagia Cull, Kentucky Home Health Association; Travis Shirley, Kentucky Wood Products.

The Subcommittee determined that the following administrative regulations were deficient because they do not comply with statutory authority:

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:130. Western Kentucky Correctional Complex. In response to questions from Representative Lee, Mr. Damron stated that: (1) many of the amendments were made to comply with the drafting and format requirements of KRS Chapter 13A; (2) questions had been raised over the authority of the Department to impose a \$2 co-pay fee for medical services on inmates; (3) the constitutionality of a co-pay fee had been upheld by: (a) courts throughout the country; and (b) in two trial courts in Kentucky; (4) the Department did not feel that Section 254 of the Kentucky Constitution prohibited a co-pay fee; (5) inmates would receive medical treatment as needed regardless of ability to pay; (6) malingerers and hypochondriacs routinely abuse sick call services; (7) some responsibility must be placed on the inmates in order to have an orderly and efficient medical care system; (8) trial court decisions were not binding authority; (9) the General Assembly had enacted a co-pay requirement for jail inmates during the last session; (10) money was appropriated for the care of prisoners in the budget passed by the General Assembly; and (11) the \$2 co-pay fee was: (a) not a revenue generating measure; and (b)

intended to be a measure to instill responsibility in the inmates;

Representative Lee stated that: (1) the issue of co-payment by inmates for medical services needed to be brought before the General Assembly for approval; (2) he did not feel that the Department had the authority to charge a co-pay without the General Assembly specifically granting it the authority; (3) while he appreciated what the Department was trying to do, it was not the mandate of the Subcommittee to determine whether the agency's actions were admirable or right; (4) it was the duty of the Subcommittee to determine if an agency had the authority under KRS Chapter 13A to promulgate an administrative regulation that is not specifically granted by statute; (5) by his interpretation of the statute, the Department did not have the authority to charge a co-payment for medical services; and (6) the Department could have requested authority to charge the fee at the time the statute permitting medical co-payment for inmates of jails was passed.

Senator Roeding stated that: (1) there was a problem with inmate use of medical services; (2) since authority had been given to the jails to charge a co-payment, he believed that this granted authority to all correctional institutions; (3) in order to cut down on fraudulent use and misuse of the medical services, the Department should be permitted to charge the co-payment fee until the issue was brought before the General Assembly.

In response to a question from Senator Kafoglis, Mr. Damron stated that the: (1) co-payment seemed to be an effective tool, nationwide, to stop some of the abuse of prison medical services; and (2) Department believed that the co-payment is not prohibited by the Kentucky Constitution.

Senator Roeding stated that: (1) when he read the legislation that had been passed permitting the jails to charge a co-payment, he assumed that all correctional institutions had been granted this authority; (2) if one looked at legislative intent, the Department was granted the authority to charge the fee; and (3) if he thought that the legislation applied different rules for jails and the Department, he would have asked that the legislation extend the authority to charge a co-payment to the Department.

Representative Lee stated that the: (1) issue regarding the county jails was brought before the General Assembly for a vote; (2) Cabinet could have asked that the authority to charge a co-payment be extended to the Department; (3) General Assembly could have appropriated less money in the budget for the medical care of inmates, if it had granted the Department the authority to charge a co-payment; and (4) statute on its face did not grant the Department the authority to charge the co-payment.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and WKCC 02-01-02, III, A., 1., d. were amended to conform to: (a) KRS 196.035 and KRS 197.020(1) establishing the proper official and administrative body authorized to promulgate administrative regulations; and (b) KRS 196.270, by adding the Commissioner and the executive Director of the Division of Administrative Services to the Board of Directors of the Inmate Canteen, and deleting the Secretary of the Cabinet; (2) WKCC 02-02-01, III, A., 2. was amended to comply with KRS 197.180 requiring the Department, upon release by pardon or parole or an inmate, to provide the inmate with a suit and transportation to a Kentucky county; (3) WKCC 11-00-04, III, F. 1., WKCC 13-01-01, III, C. 1. and D. 1., WKCC 13-02-01, III, K. 2., were amended to comply with the drafting requirements of KRS 13A. 222(4)(a); (4) WKCC 13-01-01, II, A. and 13-01-01, III, d. 1. were amended to comply with the provision of KRS 314.011(8) that granted advanced registered nurse practitioners authority to prescribe nonscheduled legend drugs; (5) WKCC 13-02-01, III, U. was amended to comply with the formatting requirements of KRS 13A.220(4); (6) the "Medical

Office Sick Call Record" form, "Dental List" form, "Refusal of Services" form, "Kentucky Correctional Psychiatric Center Referral" form, "Refusal to Sign Refusal of Services" form, "Outside Consultation Request for Elective or Cosmetic Services" form, "Inmate Accident Report" form, "Employee Accident Report" form, "Health Screening" form, "Request to Inspect Public Records" form, "Authorization for Release of Information" form, and "First Aid Kits Inventory" form were incorporated by reference in WKCC 13-02-01; and (7) the proposed deletion of WKCC 17-01-01, relating to inmate property, was rescinded.

The Subcommittee approved a motion to find this administrative regulation deficient.

Jail Standards for Counties Not Housing Class D Felons

501 KAR 13:010. Life safety issues. Keith Hardison, Staff Attorney and Robert Powell, represented the Department of Corrections. In response to a question by Representative Lee, Subcommittee staff stated that: (1) KRS 441.055 had been amended to provide that counties that elected to house state prisoners were required to adopt the standards of the Jail Standards Commission; (2) this administrative regulation imposed those standards for counties that had not elected to house state prisoners in their jails; and (3) since this administrative regulation violated KRS 441.055, KRS Chapter 13A required that this administrative regulation be withdrawn.

Mr. Hardison stated that: (1) it was the Department's intention that there be a lesser requirement on jails that elected not to house state prisoners; (2) the statute as amended provided enforcement powers the Department could use if it found that a jail did not meet the lesser standards; (3) the statute was poorly worded because it did not specifically provide that the Department could not promulgate administrative regulations; (4) the Department believed that the legislation it was intended to permit it to maintain some authority over jails that did not elect to house state prisoners.

Representative Lee stated that: (1) this administrative regulation was clearly prohibited by the statute; (2) the issue of authority to impose standards over jails that did not elect to house state prisoners needed to be clarified by the General Assembly; (3) current statutes are specific, and provide that the fiscal court of each county is responsible for jail standards if the county does not elect to house state prisoners; (4) if the Department felt that there should be standards enforced by the state, it could the General Assembly to enact legislation establishing the standards and granting it the authority to impose them; and (5) the Department should not assume that it was the intent of the General Assembly that it enforce standards in jails that do not elect to house state prisoners.

The Subcommittee approved a motion to find this administrative regulation deficient.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Finance and Administration Cabinet: Purchasing

200 KAR 5:302 & E. Delegation of authority. Karen Powell, General Counsel, and Mike Abell, Director, Division of Purchasing, represented the Cabinet. Ms. Powell stated that: the Cabinet requested an amendment to the administrative regulation to insert "not" after "authority shall" in Section 2(2) because: (1) the Cabinet had not intended the Secretary to agree to delegate authority if the authority had been revoked because of an erroneous application by an agency; and (2) without the "not", the Secretary was required to re-delegate the authority after a mistake had been made.

This administrative regulation was amended as follows: Section 2(2) was amended to prohibit, rather than require, the extension or renewal of the authority to delegate when the Secretary of the Cabinet revoked a delegation of authority because of demonstrated deficiencies in procurement expertise or practice.

200 KAR 5:306. Competitive sealed bidding. Subcommittee staff

stated that: (1) the suggested amendments were primarily drafting and formatting amendments to comply with KRS 13A.220(4) and KRS 13A.222(4)(b); (2) an issue was raised regarding electronic notice to potential bidders because the original language might have been read to discriminate against potential bidders who did not have electronic access; (3) in order to correct this situation, the amendment provided that if there was reasonable electronic access, the notification to the top ten bidders would be made electronically; (4) the Cabinet would monitor the situation; and (5) if a potential vendor did not have access to the Internet or electronic media, the Cabinet would use another approach.

In response to questions by Senator Roeding relating to the effect of electronic requests for bids on small vendors without computers, Mr. Abell stated that: (1) there were two ways to access the Cabinet's system: through: (a) a software mailed by the Cabinet to the vendor that enabled the vendor to use his computer and a modem to: 1. dial-in to the Cabinet; and 2. view, download, and print the bid requirements; and (b) the Internet; (2) for either option, the vendor was required to have access to a computer at: (a) his home or business; or (b) 1. a local library; 2. Chamber of Commerce; or 3. Small Business Development Center; (3) while a vendor cannot go today to every Chamber of Commerce to access the system, the Cabinet has a staff person who traveled statewide speaking to groups to raise interest about the program; (4) if interest was expressed, the Cabinet tried to sign an agreement with the local Chamber or library to be an access point for this program; (5) the Cabinet would not rule that access was available for a particular commodity until it knew there was access in the geographic area where the bids were needed; and (6) this program was based on Oregon's experience which showed that small businesses benefited from electronic access more than anybody else because it leveled the playing field in giving them access to the information.

Representative Lee stated that: (1) he shared Senator Roeding's concerns that a vendor, especially a small business vendor, not be excluded from the bidding procedures because of a lack of computer access; and (2) the Subcommittee and the Cabinet needed to ensure the existence of safeguards that gave all potential bidders for state business notification and the opportunity to bid.

In response to a question by Representative Bruce, Ms. Powell stated that: (1) the Cabinet was not going to require electronic bidding for a particular commodity until all potential vendors had access; (2) the first commodity for which electronic bidding would be used was the computer business; and (3) the Cabinet would not implement electronic bidding for the next commodity until it was sure that all potential vendors had access.

Representative Bruce stated that: (1) because there were so many Kentucky towns with Chambers and libraries, he did not believe that one Cabinet employee could successfully travel throughout the state to inform all of them; and (2) the Cabinet needed to: (a) send more employees throughout the state; or (b) do a statewide advertising campaign; and (c) have its person available to explain the information after it was sent to the Chambers and libraries.

In response to a question by Representative Lee, Mr. Abell stated that: (1) for the last six to eight months, the Cabinet had included a notice about the availability of the electronic access system every time the Cabinet sent out a bid invitation; (2) the notice included information on how a vendor could get the necessary software; and (3) the Cabinet intended to notify every potential bidder by that method.

In response to a question by Senator Roeding, Mr. Abell stated that the Internet Website address was: (1) included in the notice; and (2) emphasized in mailings.

Representative Lee stated that: (1) the Subcommittee would monitor this situation to see how the procedure worked; and (2) if changes were needed to ensure that all interested parties were notified about bids for state business, this administrative regulation would be reconsidered by the Subcommittee for an amendment.

This administrative regulation was amended as follows: (1) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Section 1 was amended to require a determination by the Director of the Division of Purchases that reasonable access to the Vendor Information Program Bulletin Board System existed before an agency could electronically upload an invitation for bid.

Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010. Formula for allocation of private bonds. Kim Blitch, Financial Analyst of the Finance and Administration Cabinet represented the Cabinet. In response to questions from Senator Roeding, Ms. Blitch stated that: (1) the "Notice of Intent" application, incorporated by reference in the administrative regulation, was available to the general public; (2) the form was mailed to approximately one hundred people on the Cabinet's mailing list; (3) all bond counsel in the state was familiar with the application; (4) the application is kept on file by the Cabinet; (5) affected associations were not required by law to request to be put on the "Notice of Intent" mailing list; (6) if an association calls the Cabinet, it is added to the list; (7) all bond counsel firms in the state and underwriting firms are on the mailing list; (8) companies, in order to go through a bond issue, will usually contact one of the bond counsels and be given the notice of intent; and (9) it would be possible to add all associations that might apply for a bond issue.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, AND NECESSITY AND FUNCTION paragraphs were amended to correct statutory citations; (2) The NECESSITY AND FUNCTION paragraph was amended to comply with the drafting requirements of KRS 13A.222(4)(a), (b), and (c); (3) Section 1(1) was amended to comply with the drafting requirements of KRS 13A.222(4)(a) and (c); (4) Section 1(2) was amended to comply with the drafting requirements of KRS 13A.222(4)(d); (5) Section 2 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) the prohibition in KRS 13A.120(2)(e) against prescribing in an administrative regulation the same or similar procedure prescribed by statute; (6) Sections 3, 6, 7, 8, 9, and 10 were amended to comply with the drafting requirements of KRS 13A.222(4)(a), (b), and (c); (7) Section 11 and 12 were amended to comply with the: (a) drafting requirements of KRS 13A.222(4)(a) and (c); and (b) formatting requirements 13A.220(4); (8) Section 13 was amended to comply with the: (a) drafting requirements of KRS 13A.222(4)(a) and (c); and (b) formatting requirements 13A.220(4); (9) Section 14 was amended to comply with the drafting requirements of KRS 13A.222(4)(a), (b), (c), and (j); and (10) U. S. Treasury Department Form 8328 was incorporated by reference in Section 15.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:201. Fishing limits. Tom Bennett, Commissioner, Pete Pfeiffer, Director of Division of Fisheries, and Bob Bates, Director of the Division of Administrative Services represented the Department. Mr. Bennett stated that this administrative regulation established size and creel limits on: (1) five lakes; and the (2) Cumberland River; (3) Peabody Wildlife Management area; and (4) Cypress AMAX Wildlife Management area

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION paragraphs were amended to correct statutory citations; (2) The NECESSITY AND FUNCTION paragraph, Sections 1(7), 2(1), 4(11), 4(20), 4(21), 4(22), and 4(35) were amended to comply with the drafting requirements of KRS 13A.222(4)(a); (3) Sections 2(1), 4(3)(a), 4(11), 4(15), 4(16), 4(20), 4(21), 4(22), 4(33)(d), 4(34)(d), 4(52), and 4(53)(b) were amended to comply with the format requirements of KRS 13A.220(4); (4) Sections 2(2), 2(3), 2(6), 2(7), and 4(45)(g) and (h) were amended to comply with the drafting

requirements of KRS 13A.222(4)(j); (5) Section 2(5) through (7) was amended to comply with the formatting requirements of KRS 13A.220(4); and (6) Sections 3, 4(1), 4(10)(a), 4(33)(a), 4(37), 4(44), and 4(50) were amended to comply with the drafting requirements of KRS 13A.222(4)(b).

Hunting and Fishing

301 KAR 3:028. Applying for disability hunting and fishing licenses. Mr. Bennett stated that this administrative regulation had been amended to establish the procedure for persons with 100% railroad disabilities to be exempted from having to purchase hunting and fishing licenses.

In response to questions from Representative Allen, Mr. Bennett stated: (1) retired persons aged sixty-five or older received free hunting and fishing licenses pursuant to a bill passed in the late 1980's; (2) some licensed vendors of hunting and fishing licenses had given erroneous information that retired persons also received free deer tags; (3) according to a 1990 Attorney General's opinion the intent of the legislation was that while the license was free, sportsmen were required to pay for deer tags or permits, turkey permits, or trout permits; (4) there is legislation providing an exemption to the requirement for a waterfowl permit; (5) citizens sixty-five and older would not have to pay for permits this year; (6) there was language in the Department's budget that instructed the Department to adhere to the 1990 Attorney General's opinion; (7) because of the printing cycle of the documents distributed by the Department to the public, the requirement of permits could not be enforced until March 1, 1997; (8) no one would be cited for not having a permit until after March 1, 1997; and (9) the Department is explaining to members of the public who inquire that the law requires that they purchase permits.

The administrative regulation was amended as follows: (1) the title of the administrative regulation was amended to correctly state the subject matter of the administrative regulation pursuant to KRS 13A.222(4)(a); (2) the STATUTORY AUTHORITY and NECESSITY AND FUNCTION paragraphs were amended to correct and add statutory citations; (3) Section 1(2) was renumbered as Section 1(3); (4) Section 2(2) was amended to comply with the prohibition in KRS 13A.120(2)(e) against prescribing in an administrative regulation the same or similar procedure prescribed by statute; (5) Section 3 was amended to comply with the: (a) formatting requirements of 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(a); and (6) the "Disability exemption verification" card was incorporated by reference in Section 4.

Wildlife

301 KAR 4:200. Cyprus AMAX Robinson Forest Wildlife Management Areas use requirements and restrictions. Mr. Bennett stated that: (1) this amendment corrected drafting and format errors; and (2) the Department had the capacity to sell permits for the use of Peabody, Cypress AMAX, and Robinson Forest Wildlife Management Areas at every licensed vendor across the state.

The administrative regulation was amended as follows: (1) The RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION paragraphs were amended to correct and add statutory citations; (2) Sections 2, 4(1), 5(6), 5(8), and 7(12) were amended to comply with the drafting requirements of KRS 13A.222(4)(a); (3) Sections 2 and 6(1) were amended to comply with the drafting requirements of KRS 13A.222(4)(j); (4) Sections 5(1) was amended to designate the names of permits; (5) Section 6 was deleted in its entirety; and (6) Section 7(4) was amended to comply with the: (a) formatting requirements of 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(a).

Department of Agriculture: Tobacco Sales

302 KAR 78:020 (& E). Use, sale and distribution of tobacco products. Mark Farrow, General Counsel, and Danny Wilson, Executive Director, Office for Consumer and Public Services, represented the Department.

This administrative regulation was amended as follows: the

RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations.

Justice Cabinet: Charitable Gaming

500 KAR 11:025. Quarterly reports. Section 4(1) and (2) of this administrative regulation was amended by inserting the word "fine", in place of "fee", in order to comply with KRS 238.560(3) that permitted fines but did not authorize fees.

500 KAR 11:030. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Section 7(3)(e) was amended to comply with the drafting requirements of KRS 13A.222(4)(a).

500 KAR 11:080. Special charity fundraising event. This administrative regulation was amended as follows: (1) the Title was amended to comply with statutory language governing the subject matter of this administrative regulation; (2) The RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct and add statutory citations; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS 13A.222(4)(a); (4) Sections 1, 4, 5, and 6 were amended to reflect the new title; (5) Section 1(1) was amended to comply with the drafting requirements of KRS 13A.222(4)(a); and (6) Section 6 was amended to incorporate CG-Schedule A, "Application for Special Limited Charitable Gaming License/Special Charity Fundraising Event License (For use with Form CG-1)".

500 KAR 11:110 & E. Keno. Mr. Reichert stated that this administrative regulation was amended to: (1) comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(a); and (2) the requirements for reports from Keno machines had been amended because the Division had learned that Keno machines would not be able to perform as required by this administrative regulation.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct and add statutory citations; and (2) Section 1(3) was amended to provide that the charitable organization generate an updated shift report and a daily report at the conclusion of each day.

Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Jack Damron and Tamala Biggs, Staff Attorneys represented the Department of Corrections. Material incorporated by reference in this administrative regulation was amended by: (1) deleting the definitions of "Commercial Purpose" and "Non-Commercial Purpose" from Corrections Policy and Procedure Section 6.1, Page 1, V.; and (2) inserting a reference to KRS 61.870(4)(a) and 61.870(4)(b).

Department of Alcoholic Beverage Control: Tobacco Enforcement

804 KAR 13:010 & E. Tobacco enforcement and administration. Pam Farmer, General Counsel, and Margaret Plattner, program coordinator for the teen tobacco enforcement program, represented the Department of Alcoholic Beverage Control.

In response to a question from Representative Lee, Ms. Farmer stated that: (1) by Executive Order, the Governor transferred enforcement functions to the Department; (2) the Department is responsible for conducting random, unannounced inspections at retail establishments that sell tobacco products to: (a) determine the existing level of tobacco sales to teenage buyers, and (b) reduce those sales with the assistance of underage volunteers.

In response to questions from Senator Roeding, Ms. Farmer stated: (1) that by statute both the seller to an underage buyer and the underage buyer are subject to civil penalties; (2) the fine for the seller on a first offense is \$100; (3) the fine for an underage buyer on a first offense is \$50; (4) the Department is in the process of enforcing the law at this time; (5) the Department has citations ready to be issued to violators; (6) during the summer months, the Depart-

ment had established an approximately 60% buy rate; (7) Department agents sent volunteers into about 1,000 establishments across the State; and (8) the Department feels that the: (a) 60% figure is low; (b) buy rate will be higher during the next year; and (c) national average is higher than 60%.

In response to a question from Representative Lee, Ms. Farmer stated that within sixty days the: (1) program would be fully functional; (2) public would be able to see results from the State's attempt to curtail tobacco sales to minors; and (3) Department would be able to provide numbers regarding sales made and citations issued.

Ms. Plattner stated that the: (1) University of Kentucky is conducting a survey; (2) its methodology would be employed by the Department; (3) methodology must be approved by the Federal; (4) Department could not do everything it wanted to regarding the buys until it received approval; and (5) approval was expected in the near future.

In response to a question from Representative Allen, Ms. Farmer stated that: (1) the Department employed approximately 30 agents who had state-wide jurisdiction; (2) previously, the Department had focused its efforts only in wet counties; (3) the Department had hired 4 or 5 new agents since its responsibility was now focused on all counties; (4) the General Assembly had appropriated .01% of the tobacco tax for the Department of Agriculture to pay for the program; and (5) the Department of Agriculture had shifted half of this funding to the Department to pay for enforcement.

In response to a question by Representative Allen, Ms. Plattner stated that: (1) the Department was using minors or underage investigative aids in its compliance checks; (2) the minors are critical to the program of compliance checks; (3) constitute one of a variety of methods to determine if retailers are complying with the law; and (4) the Department recruited some of the young people by approaching youth groups and asking for volunteers.

Ms. Farmer stated that: (1) it was unlawful for anyone to purchase tobacco products for minors; (2) the Department would cite a person caught doing this; (3) the Department had previously employed about 30 agents; (3) only 4 or 5 new agents had been hired; and (4) while the youth involved in the checks were not paid for their assistance last summer, the Department was considering paying them in the future.

In response to a question by Senator Roeding, Ms. Farmer stated that the Department of Agriculture had taken on the responsibility for educating the retailers, vendors, and purchasing public regarding the laws on selling tobacco to minors.

Cabinet for Health Services: Department for Public Health: Emergency Medical Services and Ambulance Service Providers

902 KAR 14:070 (& E). License procedures and fee schedule for ambulance providers. Robert Calhoun, Emergency Medical Services Branch, represented the Cabinet. In response to a question by Senator Roeding, Mr. Calhoun stated that because: (1) this administrative regulation did not increase the fees for ambulance providers, the fees remained at the same rate they had been for the last four years; and (2) House Bill 494 established classes of ambulance services, the same number of providers were now being divided into classes of operation.

Representative Lee stated that: (1) this administrative regulation would save Kentucky taxpayers a considerable amount of money because taxicabs now had county-wide, rather than city-wide, authority to transport Medicaid patients; and (2) prior to this change, a certified technician or an ambulance was required to transport someone for Medicaid to the doctor's office.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) a new Section 5 was created to permit temporary licensing to operate an ambulance service in Kentucky pending the approval or disapproval of a certificate of need application; and (3) Section 2(1) and (4) were amended to correct an internal

cross-reference.

902 KAR 14:080. Class I ground ambulance providers. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 2(3) was amended to include in the situations exempt from the provisions of the administrative regulation: (a) a person proceeding to alleviate emergency circumstances pursuant to 900 KAR 6:010, Section 9; and (b) an ambulance service owned and operated by a city government which provides services in coterminous cities outside the ambulance service's designated service area pursuant to KRS 216B.020(4); and (3) Sections 2(3), 6(2) and (4) were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

Cabinet for Families and Children: Department for Social Services: Child Welfare

905 KAR 1:360 & E. Private child care levels of care. Dennis Corrigan, Director of Family Services; Mike Cheek, Division of Program Management; and Ken Roten, Assistant Director of Program Management, represented the Department.

In response to a question by Representative Bruce, Mr. Cheek stated that the amendments were based on the initial staff review comments to: (1) comply with KRS Chapter 13A; and (2) include an assurance that the gatekeeper would send information to the Division of Licensing and Regulation.

Subcommittee staff stated that the amendment also clarified the requirements for evaluating the progress of a child.

In response to a question by Senator Roeding, Mr. Cheek stated that the gatekeeper was defined in this administrative regulation as the Department or an agent who was responsible for making a clinical determination of the level of care necessary to meet a child's treatment.

Mr. Roten stated that: (1) the program was currently called the Children's Review Program; (2) the agent, which was currently the Bluegrass Mental Health/Mental Retardation Board, was where the program was located for the entire state; (3) the employees of the Bluegrass MH/MR Board worked in the program, which was a unit designed specifically to determine the levels of care; and (4) the determinations: (a) were currently made by fax transmissions for the entire state; and (b) would begin to involve site visits with actual reviews conducted on-site.

Mr. Corrigan stated that: (1) there was direct input from local staff in regard to the determination on the levels of care; (2) the procedure included: (a) information provided by the local worker to the gatekeeper; (b) a decision on the level of care: 1. made by the gatekeeper; and 2. faxed to the local worker; and (d) placement through private child care by the local worker; (3) the Bluegrass MH/MR Board was open to people from all over the state, and was not restricted to Fayette County; and (4) throughout the state, the response of the field staff to the levels of care and the process had been very good.

In response to a request by Senator Roeding, Mr. Roten stated that: (1) he would send a list of the composition of the Children's Review Program to the Subcommittee; (2) the Children's Review Program was not actually a Board; (3) it was a program that consisted of: (a) a master's level psychologist; (b) two psychologists; (c) two MSWs; and (d) a Director who was a Ph.D. psychologist with some percentage of time in psychiatry; and (3) the board was actually the name of the communal mental health center agency.

Representative Lee (1) stated that the Subcommittee was interested in finding out who made these decisions by: (a) name; and (b) area of Kentucky in which they lived; and (2) requested the Department send Subcommittee staff a copy of the information to forward to Subcommittee members.

Representative Bruce requested that the information include the number of requests: (a) received from each area of Kentucky; and (b) turned down or approved.

In response to a question by Representative Bruce, Mr. Roten

stated that: (1) everyone is assigned a level of care; (2) most of the private child care facilities currently had waiting lists; and (3) while the child was put on a waiting list, the level let the private child care facility know what types of behavior and problems the child had.

In response to a question by Representative Bruce regarding a study by the University of Kentucky, Mr. Roten stated that while it was not actually a study, this function was now being completed by the Bluegrass MH/MR Board.

This administrative regulation was amended as follows: (1) Sections 1(4), 4(2), 6(2), 7, and 8(1) were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Section 3(4) was amended to require: (a) reevaluation for each child: 1. within six (6) months of the placement; and 2. every three (3) months thereafter; and (b) the gatekeeper to: 1. review the extent to which services provided were in compliance with the child's treatment plan; 2. determine if changes in the child's needs were reflected in the plan; and 3. advise the Division of Licensing and Regulation of discrepancies.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Legislative Ethics Commission

2 KAR 2:010E. Legislative agent or employer registration statement, legislative agent's updated registration statement, legislative agent's notice of termination of engagement, employer's updated registration statement, employer's notice of termination of engagement. Earl Mackey, Executive Director, and Peggy Williams, Principal Assistant, represented the Commission. Mr. Mackey stated that because the amendments made by the 1996 General Assembly to the Legislative Ethics Laws became effective July 15, 1996, it was necessary to promulgate an emergency administrative regulation to amend the forms the Commission used to collect the required information from legislative agents and their employers.

In response to a question by Senator Roeding, Mr. Mackey stated that the Commission: (1) amended the forms to avoid sending out additional forms to agents and employers which would have essentially required them to file almost duplicate forms; and (2) felt it would be a fairly substantial burden to require this information be reported on two different forms.

Ms. Williams stated that: (1) the reporting period was from May 1 through August 31; (2) the amended law that took effect in the middle of the reporting period included trade associations and those kinds of events in the "not anything of value" provisions; and (3) the new forms allowed the Commission to keep current records on amounts that should be reported on individual legislators in compliance with the new definition of "not anything of value".

Treasury: State Treasury

20 KAR 1:081E. Repeal of 20 KAR 1:080.

Department of Personnel; Classified

Daniel Egbers, Managing Attorney, represented the Cabinet. Mr. Egbers stated that: (1) the two administrative regulations, 101 KAR 2:010E and 3:010E, governed the leave provisions for classified and unclassified services within the executive branch of state government; (2) Section 1 governed the forfeiture of annual leave if an employee was dismissed for cause or gave an untimely notice of resignation; (3) the Cabinet believed the amendments were necessary for public health and safety because a resignation without notice could: (a) create critical staffing shortages in state hospitals, prisons, and other state agencies; (b) leave children and adults without necessary protective services; and (c) cause delay for recipients in state and federal entitlement programs; (4) the second amendment was required because existing language required an employee to make a request to invoke the Family and Medical Leave Act, in violation of

federal regulations that require an employee simply to articulate a situation that would qualify under the Act.

In response to a question by Senator Roeding, Mr. Egbers stated that this was one of the rare instances when he thought an administrative regulation qualified as an emergency on two counts: (1) the safety and health component, because it would be a horrible situation to find a state mental health facility or prison suddenly short of the necessary staff needed to maintain safety and health; and (2) to avoid a conflict with federal law.

101 KAR 2:100E. Leave administrative regulations.

Unclassified

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

Finance and Administration Cabinet: Purchasing

200 KAR 5:011E. Repeal of 200 KAR 5:010. Karen Powell, General Counsel, and Mike Abell, Director, Division of Purchasing, represented the Cabinet. Ms. Powell stated that: (1) this administrative regulation repealed the existing administrative regulation, 200 KAR 5:010, concerning the use and purchase of motor vehicles, because 1996 legislation transferred the authority for this administrative regulation to the Transportation Cabinet; and (2) the Cabinet intended to use its existing administrative regulation on purchasing commodities to cover purchases of motor vehicles by agencies for non-transportation purposes, which was included in the Manual of Policy and Procedures, 200 KAR 5:021.

Subcommittee staff stated that while this administrative regulation complied with KRS Chapter 13A, the Transportation Cabinet should be notified that its administrative regulation incorrectly implied that only the Transportation Cabinet had the authority to approve the need for a vehicle whereas the statute gave that authority both to Finance and to Transportation.

In response to a question by Senator Roeding, Representative Lee stated that: (1) it was not necessary to defer consideration of the administrative regulation until the Transportation Cabinet amended its administrative regulation; and (2) Subcommittee staff would notify the Transportation Cabinet that its administrative regulation needed an amendment to comply with the relevant statutes.

In response to a question by Senator Roeding, Ms. Powell stated that this administrative regulation: (1) repealed another administrative regulation; and (2) did not contain other amendments.

Subcommittee staff stated that the Cabinet was not required to file an ordinary administrative regulation because the emergency administrative regulation had repealed the administrative regulation.

200 KAR 5:021. Manual of Policies and Procedures.

200 KAR 5:304. Application to be placed on source list.

200 KAR 5:325. Consideration to be given to use of Kentucky-made wood products.

Board of Hairdressers and Cosmetologists

201 KAR 12:082E. Schools' course of instruction. Carroll Roberts, Administrator, represented the Board. In response to a question by Senator Kafoglis, Subcommittee staff stated that: (1) the initial staff review raised a question on these two emergency administrative regulations because they were filed on July 1; (2) KRS Chapter 13A provided that an emergency administrative regulation became effective on the date it is filed; (3) while these administrative regulations became effective, July 1, the statute requiring them did not take effect until July 15; and (3) while the agency was granted statutory authority, it did not have statutory authority to file these administrative regulations at the time they were filed.

Ms. Roberts stated that these administrative regulations were not enforced prior to July 15.

In response to a question by Senator Roeding, Ms. Roberts stated that emergency administrative regulations were filed because the: (1) schools had to have proper notice in order to: (a) revise their contracts and curriculum; (b) let prospective students know that there

will be a change in the statutes effective July 15; and (c) to help students with their enrollment; as far as the continuing education; (2) prospective sponsors wanted and needed to know what they would be required to do; and (3) licensees had to be notified as to what would become effective on July 15 for their renewals for next July of 1997.

In response to a question by Senator Roeding, Representative Lee stated that: (1) KRS Chapter 13A permitted an emergency administrative regulation to be promulgated for public health and safety reasons; and (2) grounds for the emergency regulation existed, since the administrative regulation dealt with hair, nails, and the human body.

In response to questions by Senator Roeding, Ms. Roberts stated that with regard to the continuing education courses relating to sanitation, sterilization, health safety, and welfare of the public: (1) the Board would not charge for the continuing education courses; (2) sponsors may charge attendees; (3) some programs are being offered free; (4) of the Board's first approval list of 22 sponsors, 21 would charge; (5) the Board was cognizant of cost factors, and programs are being offered for a minimum of \$5 an hour to \$10 an entire program; (6) while some courses are more expensive, those individuals would price themselves out of business; (7) the Board is: (a) also trying to get programs in every county in the state; and (b) looking at flexibility provisions for licensees unable to meet the continuing education requirements the first year of the program; and (c) considering including changes in the ordinary administrative regulation that the Board will be finding.

The Subcommittee did not approve a motion by Senator Roeding, seconded by Representative Allen, to find this administrative regulation deficient because it did not contain flexibility in the first year requirements.

201 KAR 12:200E. Requirements for continuing education for renewal of license. The Subcommittee did not approve a motion by Senator Roeding, seconded by Representative Allen, to find this administrative regulation deficient because it did not contain flexibility in the first year requirements.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Air Quality - General Administrative Procedures

401 KAR 50:035E. Permits. Kenneth Hines, Manager, Program, Planning, and Administration Branch, represented the Department. Mr. Hines stated that: (1) this administrative regulation was promulgated as an emergency administrative regulation; (2) the Department had amended this administrative regulation through the normal process twice since the 1990 Clean Air Act amendments were passed; (3) the 1990 Clean Air Act: (a) required sources to obtain a federal operating permit; and (b) allowed states to develop a program to issue a permit in lieu of the federal agency; (4) in recent months, the United States Environmental Protection Agency issued a white paper policy statement that clarified the federal regulation in a manner that created an inconsistency with the state administrative regulation; (5) the clarification reduced the burden on permittees who were preparing their permit applications due in December; (6) while the Department was required to bring the administrative regulation into compliance with federal law, it was also motivated to make the amendment to permit sources to take advantage of the flexibility provided by the federal policy change; and (7) while this emergency administrative regulation incorporated by reference the more lenient federal policies regarding the permitting process, even more lenient policies would be reflected in the ordinary administrative regulation that was scheduled to be reviewed by the Subcommittee in December.

Office of the Petroleum Storage Tank Environmental Assurance Fund

Robert E. Nickel, David Waldner, and David Wicker, represented

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the Cabinet.

- 415 KAR 1:050E. Definitions.
- 415 KAR 1:060E. Financial responsibility account.
- 415 KAR 1:070E. Petroleum storage tank account.
- 415 KAR 1:080E. Claims procedures.
- 415 KAR 1:090E. Ranking system.
- 415 KAR 1:100E. Third party claims.
- 415 KAR 1:110E. Contractor costs.
- 415 KAR 1:114E. Contractor certification.
- 415 KAR 1:120E. Hearings.
- 415 KAR 1:125E. Discovery procedure.

Justice Cabinet: Charitable Gaming

- 500 KAR 11:001 & E. Definitions.
- 500 KAR 11:010. Temporary licensure.
- 500 KAR 11:015. Permanent licensure.
- 500 KAR 11:060. Tipping prohibited.
- 500 KAR 11:070. Exempt activities.
- 500 KAR 11:090. Special limited charitable games.
- 500 KAR 11:120. Other allowable expenses.

Education Professional Standards Board

704 KAR 20:305E. Written examination prerequisites for teacher certification. Rita Osborne, Director, Division of Assessment and Internship, and Ronda Tamme, Director, Division of Certification, represented the Board.

704 KAR 20:475E. Probationary certificate for teachers of technology education.

Commission on the Deaf and Hard of Hearing: Telecommunication devices for the Deaf

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard-of-hearing and speech-impaired. Heather Harker, Principal Assistant, and Rod Grassman, TTY Distribution Program Coordinator, represented the Commission.

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance

787 KAR 1:200E. Maximum weekly benefit rate. Beverly Haverstock, General Counsel, and Linda Graves, Division of Unemployment Insurance, represented the Department.

In response to questions by Senator Roeding, Ms. Haverstock stated that: (1) the maximum weekly benefit rate was determined by using a formula established by statute and required by the federal government that used figures that were not available when the calendar year began; and (2) the formula's determination was based on factors, including the: (a) number of people that were employed; (b) money they made; and (c) the tax the employers contributed.

Ms. Graves stated that: (1) this administrative regulation detailed the figures that were used in calculating the maximum weekly benefit rate amount; (2) because in the last couple of years the weekly benefit amount increased from \$6 to \$8 annually, the current rate increase was expected; and (3) the rate was the amount an individual beneficiary drew per week, not the rate paid by the employer.

Representative Lee stated that this was an increase in the amount of money received by the recipient, not an increase in what the employer paid.

The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:

State Board of Elections: Forms and Procedures

31 KAR 4:040E. Absentee ballots cast in county clerk's office.

Voting

31 KAR 5:010E. Absentee voting.

Attorney General

- 40 KAR 1:040. Parties who may request an opinion.
- 40 KAR 1:050. Subjects on which opinions may be issued.
- 40 KAR 1:060. Subjects on which an opinion shall not be issued.
- 40 KAR 1:070. Procedures for requesting and issuing on opinion.

Department of Agriculture: Linked Deposits

302 KAR 3:010E. Linked Deposit Investment Program for agribusiness.

Economic Development Cabinet: Linked Deposit Investment Program

307 KAR 5:010E. Linked Deposit Investment Program.

Justice Cabinet: Department of State Police: Candidate Selection

- 502 KAR 45:005E. Definitions.
- 502 KAR 45:035E. Application.
- 502 KAR 45:045E. Written examination.
- 502 KAR 45:075E. Register.
- 502 KAR 45:150E. Content Based Task Test (CBTT).

Department of Training: Concealed Deadly Weapon Licensing

503 KAR 6:010E. Carry concealed deadly weapon licensing.

503 KAR 6:020E. Carry concealed deadly weapon licensing application form.

503 KAR 6:030E. The carry concealed deadly weapon licensing applicant identification photo.

503 KAR 6:040E. Application form issuance, completion, and submission procedures.

503 KAR 6:050E. Application form denial procedures and reconsideration process.

503 KAR 6:060E. Data extraction/imaging of the application materials.

503 KAR 6:070E. The applicant background analysis process.

503 KAR 6:080E. Applicant and sheriff notification processes and procedures.

503 KAR 6:090E. The license denial process.

503 KAR 6:100E. The license suspension/reinstatement process.

503 KAR 6:110E. The license revocation/reinstatement process.

Transportation Cabinet: Traffic

603 KAR 5:330E. Annual overweight permits for nondivisible loads.

Kentucky Board of Education: Department of Education: Office of Chief State School Officer

701 KAR 5:020 (& E). Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education.

701 KAR 5:051 (& E). Repeal of 701 KAR 5:050, Summary hearing procedures.

701 KAR 5:055 (& E). Removal hearing procedures.

701 KAR 5:086 (& E). Repeal of 701 KAR 5:085; Hearing process for school-based decision making complaints.

701 KAR 5:090 (& E). Teacher disciplinary hearings.

Office of District Support Services: General Administration

702 KAR 1:080 (& E). Transfer of annexed property; hearing.

School Administration and Finance

702 KAR 3:100. Data form; professional staff.

702 KAR 3:270. SEEK Funding Formula.

School Terms, Attendance and Operation

702 KAR 7:055E. Repeal of 702 KAR 7:010, 7:020, and 7:050.

702 KAR 7:065 (& E). Designation of agent to manage high

school interscholastic athletics.

702 KAR 7:125E. Pupil attendance.

Bureau of Learning Results Services: Assistance and Intervention Services

703 KAR 3:060E. Procedures for determining rewards and sanctions.

703 KAR 3:205 (& E). Management Improvement Program.

Learning Results Services

703 KAR 4:010E. The formula for determining successful schools.

Senator Roeding: (1) stated that: (a) at its August meeting, the Kentucky Board of Education approved promulgation of this emergency administrative regulation; (b) the basis for the emergency raised serious questions that could lead to litigation because of: 1. adequate notice; 2. adverse impact; and 3. fairness; (c) this administrative regulation deserved special mention because of the seriousness of the issue; (d) because this emergency administrative regulation became effective on August 12 when it was filed with the Regulations Compiler, there was not much the Subcommittee could do except request the Governor to revoke the emergency; (e) even though the rewards would be announced in October, the Subcommittee did not have a chance to review this administrative regulation because it was deferred; (f) this administrative regulation changed the formula for determining successful schools, among other things, to delete the performance event scores from the accountability determination for the current biennium which began in 1994-95; and (g) while this helped some schools, there were schools that were hurt; and (2) moved that Subcommittee staff: (a) look into the issues involved in the removal of performance event scores from the accountability system when this administrative regulation was reviewed; (b) work with the Office of Education Accountability staff in recognizing and resolving this issue because there was no sense in having this matter the subject of litigation; and (c) report back to the Subcommittee at its November meeting.

Representative Lee: (1) asked if a motion was really needed; and (2) stated that the Subcommittee staff would look for compliance with statutory authority when the administrative regulations were reviewed.

Senator Roeding stated that: (1) he worked with (a) the Subcommittee staff; and (b) OEA staff, who suggested this motion; and (2) after this issue was brought to his attention, he brought it to staff's attention.

Subcommittee staff stated that: (1) staff had met with OEA and would meet with OEA again; (2) staff would give a report to the Subcommittee based on: (a) statutory authority; and (b) its examination of the Statement of Emergency; (3) if there was statutory authority, while staff could not make a determination as to whether: (a) the statutes needed to be amended; or (b) the authority of the Department should be restricted, the Subcommittee could make these determinations; and (5) the staff would complete its review of the administrative regulation, and report back to the Subcommittee at its next meeting.

Senator Roeding: (1) asked if that was soon enough; and (2) stated that because the emergency administrative regulation was already in effect, the accountability scores would be released without adequate notice to the schools.

Senator Roeding stated that: (1) he wanted to make sure that the administrative regulations were done right; (2) this administrative regulation should not be an emergency if the Department did not have the legal authority to promulgate it; (3) the Subcommittee needed to hold the Department's feet to the fire; (4) a legislator would hear about a school in his district that was hurt by this change; and (2) moved that the Subcommittee staff: (a) look into the issue involved in the removal of the performance event scores from the accountability system when it reviewed this administrative regulation; (b) work with the OEA staff in recognizing and resolving these issues; and (c) report back to the Subcommittee in November. The motion was seconded by Representative Allen.

Senator Kafoglis stated that he wanted to amend the motion to

refer the issue to the Education Committee.

Representative Lee stated that because there was a motion on the floor with a second, the sponsor of the first motion must be willing to withdraw the first motion.

Senator Roeding stated that he wanted both committees to look at the issue.

Representative Lee stated that because the first motion was on the floor, the Subcommittee needed to vote on it before acting on Senator Kafoglis' motion.

Representative Allen: (1) stated that once a motion was on the floor with a second, a roll call vote on that motion was required; and (2) a separate motion could then be made.

Representative Lee stated that: (1) Representative Allen was correct; (2) the Subcommittee should vote on the original motion that was on the floor; (3) if Senator Kafoglis wanted to make an amendment or a new motion after the vote, he could; and (4) there was discussion on the motion.

In response to a question by Representative Bruce, Representative Lee stated that: (1) if the motion failed, Senator Kafoglis could make a motion that would stand on its own; (2) if Senator Kafoglis' motion received a second, the Subcommittee would vote on it; (3) if the motion passed, Senator Kafoglis could move to amend the original motion to add his motion to the subject matter; and (4) the Subcommittee was now voting on the original motion that was: (a) made by Senator Roeding; and (b) seconded by Representative Allen.

The vote on the motion was: (1) Senators Kafoglis and Pendleton and Representatives Bruce and Lee passing; and (2) Senator Roeding and Representative Allen voting "yes".

Representative Bruce stated that House and Senate rules applied in this case. Senator Kafoglis stated that: (1) the Subcommittee had always ruled that four affirmative votes were needed to approve an administrative regulation; and (2) in the past, a pass vote had not been counted as an affirmative vote.

After a discussion relating to the votes required to approve the motion, Representative Lee stated that as acting chairman he ruled that: (1) because the Subcommittee used House and Senate Rules, a certain percentage of the quorum voting was needed in order for a motion to pass; (2) approving a motion required a majority of the quorum present voting for the motion; (3) a "pass" vote was counted as not voting. (4) if there was an objection to the ruling of the chair, it would so be noted; (5) the motion failed based on a ruling by the chair; and (5) if there was any problem with his ruling, objections would be noted.

Senator Roeding stated that he wanted his objection noted.

703 KAR 4:090E. Statewide Assessment and Accountability Program; school building and local district appeal of performance judgements.

Office of Special Instructional Services: Exceptional and Handicapped Programs

707 KAR 1:180 (& E). Due process procedures.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:089E. Workers' compensation medical fee schedule for physicians.

Department for Mines and Minerals: Miner Training, Education and Certification

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians.

Department of Insurance: Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:060E. Registration of service contracts for consumer products.

Health Insurance Contracts

806 KAR 17:100E. Certificate of filing for provider-sponsored

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networks.

806 KAR 17:120E. Accountable health plan certification.

806 KAR 17:130E. Twenty-four (24) Hour Pilot Insurance Program.

Group and Blanket Health Insurance

806 KAR 18:060E. Filing requirements for associations.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:026. Racing associations.

Cabinet for Health Services: Certificate of Need

900 KAR 6:010E. Certificate of need process.

900 KAR 6:020E. Certificate of need application fee schedule.

900 KAR 6:030E. Certificate of need expenditure minimums.

900 KAR 6:040E. Licensure hearings.

Department for Public Health: State Health Plan

902 KAR 17:030E. State Health Plan.

902 KAR 17:040E. Data reporting by health care providers.

Health Services and Facilities

902 KAR 20:275E. Mobil health services.

902 KAR 20:320E. Psychiatric treatment facility operation and services.

Radiation Operators Certification

902 KAR 105:070E. Violations and enforcement.

Water Fluoridation

902 KAR 115:020E. Enforcement of water fluoridation program.

Cabinet for Families and Children: Department for Social Insurance: Public Assistance

904 KAR 2:470E. Disability Determinations Program.

Department for Social Services: Child Welfare

905 KAR 1:320E. Fair hearings.

Day Care

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

Cabinet for Health Services: Department for Medicaid Services

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

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services.

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

907 KAR 1:034E. Early and periodic screening, diagnosis, and treatment services.

907 KAR 1:035E. Payments for early and periodic screening, diagnosis, and treatment services.

907 KAR 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities.

907 KAR 1:715E. School-based health services.

Payment and Services

907 KAR 3:020E. Coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency.

The Subcommittee adjourned at 12:15 p.m. until November, 1996 at 10 a.m. in Room 149 of the State Capitol Annex (meeting date will be set later).

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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 TRANSPORTATION

Meeting of October 1, 1996

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of October 1, 1996, having been referred to the Committee on September 12, 1996, pursuant to KRS 13A.290(6):

601 KAR 1:025
601 KAR 1:101
601 KAR 13:090 & E
601 KAR 13:100 & E
603 KAR 2:015

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 3, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE

Meeting of October 16, 1996

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of October 16, 1996, having been referred to the Committee on October 10, 1996, pursuant to KRS 13A.290(6):

902 KAR 14:070 & E
902 KAR 14:080
905 KAR 1:360 & E

The committee took no action on the previously listed Administrative Regulations which is reflected in the minutes of the October 16, 1996 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates E2

The Locator Index lists all administrative regulations published in VOLUME 23 of the Administrative Register from July, 1996 through June, 1997. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 22 are those administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 bound Volumes were published.

KRS Index E10

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 23 of the Administrative Register.

Subject Index E22

The Subject Index is a general index of administrative regulations published in VOLUME 23 of the Administrative Register, and is mainly broken down by agency.

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LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 23 Ky.R Page No. | Effective Date | Regulation Number | 23 Ky.R Page No. | Effective Date |
|----------------------|---------------------|-------------------|----------------------|---------------------|-------------------|
|----------------------|---------------------|-------------------|----------------------|---------------------|-------------------|

VOLUME 22

The administrative regulations listed under VOLUME 22 are those administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

| | | |
|-----------------|------|----------|
| 200 KAR 5:302E | 2249 | 5-15-96 |
| 201 KAR 8:430E | 2252 | 5-15-96 |
| Replaced | | 9-18-96 |
| 500 KAR 11:001E | 2253 | 5-15-96 |
| 500 KAR 11:110E | 2255 | 5-15-96 |
| 601 KAR 13:090E | 1971 | 4-15-96 |
| Replaced | | 10-1-96 |
| 601 KAR 13:100E | 1973 | 4-15-96 |
| Replaced | | 10-1-96 |
| 702 KAR 3:285E | 2257 | 5-15-96 |
| 787 KAR 1:210E | 1976 | 4-8-96 |
| Replaced | | 10-14-96 |
| 902 KAR 1:400E | 2267 | 5-13-96 |
| 902 KAR 14:070E | 2269 | 5-15-96 |
| 902 KAR 17:021E | 2272 | 4-30-96 |
| Expires | | 11-17-96 |
| 904 KAR 3:042E | 1977 | 4-15-96 |
| Replaced | | 9-18-96 |
| 907 KAR 1:013E | 2273 | 5-13-96 |
| 907 KAR 1:034E | 2278 | 5-13-96 |
| 907 KAR 1:035E | 2282 | 5-13-96 |

| | | |
|----------------|------|---------|
| 907 KAR 1:060E | 1576 | 1-18-96 |
| 907 KAR 1:061E | 1578 | 1-18-96 |
| 907 KAR 1:140E | 1981 | 4-4-96 |
| 907 KAR 1:715E | 2283 | 5-13-96 |
| 907 KAR 3:005E | 1984 | 4-15-96 |
| Replaced | | 9-18-96 |
| 907 KAR 3:010E | 1986 | 4-15-96 |
| Replaced | | 9-18-96 |
| 908 KAR 1:340E | 1582 | 1-30-96 |

ORDINARY ADMINISTRATIVE REGULATIONS:

| | | |
|---------------|------|-----------------|
| 201 KAR 8:015 | | |
| Amended | 2311 | (See Volume 23) |
| 601 KAR 1:200 | 2504 | (See Volume 23) |
| 815 KAR 8:010 | | |
| Amended | 2335 | (See Volume 23) |
| 815 KAR 8:020 | | |
| Amended | 2337 | (See Volume 23) |
| 902 KAR 8:090 | | |
| Amended | 2359 | (See Volume 23) |
| 907 KAR 1:060 | | |
| Amended | 2497 | 8-21-96 |
| 907 KAR 1:061 | | |
| Amended | 2499 | 8-21-96 |
| 908 KAR 1:340 | 2512 | (See Volume 23) |

*Statement of Consideration Not Filed by Deadline

VOLUME 23

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

| | | |
|-----------------|------|----------|
| 2 KAR 2:010E | 1349 | 7-18-96 |
| 11 KAR 13:010E | 1537 | 9-13-96 |
| 20 KAR 1:081E | 320 | 7-15-96 |
| 31 KAR 4:040E | 44 | 6-13-96 |
| 31 KAR 5:010E | 45 | 6-13-96 |
| 40 KAR 3:020E | 1876 | 10-15-96 |
| 101 KAR 2:100E | 46 | 5-23-96 |
| 101 KAR 3:010E | 52 | 5-23-96 |
| 106 KAR 3:010E | 1539 | 8-28-96 |
| 200 KAR 5:011E | 320 | 7-12-96 |
| 200 KAR 22:130E | | |
| Replaced | 210 | 9-11-96 |
| 201 KAR 1:040E | | |
| Replaced | 1393 | 9-11-96 |
| 201 KAR 1:045E | 58 | 5-22-96 |
| Replaced | | 9-13-96 |

| | | |
|-----------------|------|----------|
| 201 KAR 1:130E | 59 | 5-22-96 |
| Replaced | | 9-13-96 |
| 201 KAR 10:050E | | |
| Replaced | 170 | 9-11-96 |
| 201 KAR 11:190E | 1877 | 10-14-96 |
| 201 KAR 12:082E | 321 | 7-1-96 |
| 201 KAR 12:200E | 324 | 7-1-96 |
| 201 KAR 20:390E | 1541 | 8-16-96 |
| 301 KAR 2:221E | 1880 | 10-2-96 |
| 301 KAR 2:222E | 1883 | 10-2-96 |
| 301 KAR 2:224E | 1887 | 10-2-96 |
| 301 KAR 2:225E | 1544 | 8-16-96 |
| 302 KAR 3:010E | 325 | 7-15-96 |
| 302 KAR 78:020E | 61 | 6-5-96 |
| 307 KAR 5:010E | 327 | 7-15-96 |
| 401 KAR 8:030E | 1888 | 10-7-96 |
| 401 KAR 50:035E | 62 | 6-14-96 |
| 415 KAR 1:050E | 328 | 7-3-96 |
| 415 KAR 1:060E | 330 | 7-3-96 |
| 415 KAR 1:070E | 333 | 7-3-96 |
| 415 KAR 1:080E | 336 | 7-3-96 |
| 415 KAR 1:090E | 340 | 7-3-96 |

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| Regulation Number | 23 Ky.R Page No. | Effective Date | Regulation Number | 23 Ky.R Page No. | Effective Date |
|-------------------|------------------|----------------|-------------------|------------------|----------------|
| 415 KAR 1:100E | 343 | 7-3-96 | 902 KAR 16:011E | 393 | 7-12-96 |
| 415 KAR 1:110E | 344 | 7-3-96 | Expires | | 1-18-97 |
| 415 KAR 1:114E | 348 | 7-3-96 | 902 KAR 17:030E | 394 | 7-11-96 |
| 415 KAR 1:120E | 352 | 7-3-96 | 902 KAR 17:040E | 395 | 7-11-96 |
| 415 KAR 1:125E | 359 | 7-3-96 | 902 KAR 20:275E | 1380 | 8-13-96 |
| 502 KAR 45:005E | 1350 | 8-14-96 | 902 KAR 20:320E | 398 | 6-16-96 |
| 502 KAR 45:035E | 1351 | 8-14-96 | 902 KAR 47:080E | 1903 | 10-1-96 |
| 502 KAR 45:045E | 1351 | 8-14-96 | 902 KAR 47:090E | 1907 | 10-1-96 |
| 502 KAR 45:055E | 1897 | 10-15-96 | 902 KAR 47:100E | 1911 | 10-1-96 |
| 502 KAR 45:075E | 1352 | 8-14-96 | 902 KAR 105:070E | 98 | 6-12-96 |
| 502 KAR 45:150E | 1353 | 8-14-96 | 902 KAR 115:020E | 99 | 6-12-96 |
| 502 KAR 60:010E | 1354 | 8-14-96 | 904 KAR 2:410E | 1918 | 10-1-96 |
| Withdrawn | | 9-11-96 | 904 KAR 2:470E | 410 | 7-12-96 |
| 503 KAR 6:010E | 1355 | 8-14-96 | 905 KAR 1:180E | 1552 | 9-12-96 |
| 503 KAR 6:020E | 1357 | 8-14-96 | 905 KAR 1:320E | 411 | 7-12-96 |
| 503 KAR 6:030E | 1358 | 8-14-96 | 905 KAR 1:360E | 100 | 6-6-96 |
| 503 KAR 6:040E | 1359 | 8-14-96 | 905 KAR 2:100E | 416 | 7-12-96 |
| 503 KAR 6:050E | 1360 | 8-14-96 | 907 KAR 1:022E | 104 | 6-13-96 |
| 503 KAR 6:060E | 1361 | 8-14-96 | 907 KAR 1:025E | 109 | 6-13-96 |
| 503 KAR 6:070E | 1362 | 8-14-96 | 907 KAR 1:060E | | |
| 503 KAR 6:080E | 1363 | 8-14-96 | Expired | | 8-18-96 |
| 503 KAR 6:090E | 1365 | 8-14-96 | 907 KAR 1:061E | | |
| 503 KAR 6:100E | 1366 | 8-14-96 | Expired | | 8-18-96 |
| 503 KAR 6:110E | 1367 | 8-14-96 | 907 KAR 3:020E | 421 | 7-28-96 |
| 603 KAR 5:320E | 1546 | 9-3-96 | 908 KAR 1:340E | | |
| 603 KAR 5:330E | 366 | 7-12-96 | Expired | | 8-18-96 |
| 701 KAR 5:020E | 80 | 6-14-96 | 908 KAR 2:100E | 1554 | 9-13-96 |
| 701 KAR 5:051E | 81 | 6-14-96 | 908 KAR 2:110E | 1556 | 9-13-96 |
| Expired | | 10-14-96 | 908 KAR 2:120E | 1560 | 9-13-96 |
| 701 KAR 5:055E | 82 | 6-14-96 | 908 KAR 2:130E | 1563 | 9-13-96 |
| 701 KAR 5:086E | 84 | 6-14-96 | 908 KAR 2:140E | 1566 | 9-13-96 |
| Expired | | 10-15-96 | 908 KAR 2:150E | 1569 | 9-13-96 |
| 701 KAR 5:090E | 85 | 6-14-96 | 908 KAR 2:160E | 1572 | 9-13-96 |
| 702 KAR 1:080E | 86 | 6-14-96 | 908 KAR 2:170E | 1574 | 9-13-96 |
| 702 KAR 7:055E | 1368 | 8-12-96 | 908 KAR 2:180E | 1576 | 9-13-96 |
| 702 KAR 7:065E | 87 | 6-14-96 | 909 KAR 1:005E | 423 | 7-11-96 |
| 702 KAR 7:125E | 1369 | 8-12-96 | Expires | | 1-18-97 |
| 703 KAR 3:060E | 1372 | 8-12-96 | | | |
| 703 KAR 3:205E | 89 | 6-14-96 | | | |
| 703 KAR 4:010E | 1376 | 8-12-96 | | | |
| 703 KAR 4:090E | 1379 | 8-12-96 | | | |
| 704 KAR 20:305E | 367 | 6-28-96 | | | |
| 704 KAR 20:475E | 370 | 6-28-96 | | | |
| 707 KAR 1:180E | 91 | 6-14-96 | | | |
| 781 KAR 1:030E | 1548 | 9-12-96 | | | |
| 787 KAR 1:200E | 371 | 6-26-96 | | | |
| 787 KAR 1:320E | 1898 | 10-3-96 | | | |
| 803 KAR 25:036E | 1899 | 10-15-96 | | | |
| 803 KAR 25:089E | 372 | 6-28-96 | | | |
| 803 KAR 50:010E | | | | | |
| Replaced | 191 | 9-11-96 | | | |
| 804 KAR 13:010E | 373 | 7-8-96 | | | |
| 806 KAR 5:060E | 375 | 7-15-96 | | | |
| 806 KAR 9:240E | 1901 | 9-20-96 | | | |
| 806 KAR 17:100E | 376 | 7-15-96 | | | |
| 806 KAR 17:120E | 378 | 7-15-96 | | | |
| 806 KAR 17:130E | 379 | 7-15-96 | | | |
| 806 KAR 17:140E | 1550 | 8-23-96 | | | |
| 806 KAR 18:060E | 382 | 7-15-96 | | | |
| 900 KAR 6:010E | 383 | 7-11-96 | | | |
| 900 KAR 6:020E | 390 | 7-11-96 | | | |
| 900 KAR 6:030E | 391 | 7-11-96 | | | |
| 900 KAR 6:040E | 392 | 7-11-96 | | | |

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| | | |
|---------------|------|--------|
| 2 KAR 2:010 | | |
| Amended | 1603 | |
| 11 KAR 5:130 | | |
| Amended | 158 | |
| As Amended | 1387 | 9-5-96 |
| 11 KAR 8:030 | | |
| Amended | 159 | |
| As Amended | 1387 | 9-5-96 |
| 11 KAR 12:050 | | |
| Amended | 161 | |
| As Amended | 1389 | 9-5-96 |
| 12 KAR 2:006 | | |
| Amended | 1604 | |
| 12 KAR 2:011 | | |
| Amended | 1604 | |
| 12 KAR 2:016 | | |
| Amended | 1606 | |
| 12 KAR 2:017 | | |
| 12 KAR 2:018 | | |
| 12 KAR 2:021 | | |
| Amended | 1607 | |
| 12 KAR 2:026 | | |
| Amended | 1608 | |

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|-------------------|------------------|----------------|-------------------|------------------|----------------|
| 12 KAR 2:036 | | | 201 KAR 8:015 | | |
| Amended | 1609 | | As Amended | 1394 | 8-21-96 |
| 12 KAR 2:041 | | | 201 KAR 8:430 | 211 | |
| Amended | 1610 | | As Amended | 1395 | |
| 12 KAR 2:046 | | | As Amended | 1581 | 9-18-96 |
| Amended | 1611 | | 201 KAR 10:050 | | |
| 12 KAR 2:051 | | | Amended | 170 | 9-11-96 |
| Amended | 1612 | | 201 KAR 12:082 | | |
| 12 KAR 2:061 | | | Amended | 2195 | |
| Amended | 1612 | | 201 KAR 12:200 | 2335 | |
| 12 KAR 2:066 | 1809 | | 201 KAR 22:031 | | |
| 12 KAR 3:012 | | | Amended | 171 | 8-21-96 |
| Amended | 1613 | | 201 KAR 22:106 | | |
| 12 KAR 3:017 | | | Amended | 173 | 8-21-96 |
| Amended | 1615 | | 201 KAR 22:135 | | |
| 12 KAR 3:022 | | | Amended | 175 | 8-21-96 |
| Amended | 1616 | | 201 KAR 31:060 | 213 | |
| 12 KAR 3:027 | | | As Amended | 1583 | 9-13-96 |
| Amended | 1617 | | 201 KAR 32:060 | 215 | |
| 12 KAR 3:037 | | | As Amended | 1584 | 9-18-96 |
| Amended | 1618 | | 300 KAR 2:010 | 1810 | |
| 12 KAR 3:042 | 1810 | | 301 KAR 1:016 | | |
| 13 KAR 2:060 | | | Amended | 2197 | |
| Amended | 164 | | 301 KAR 1:201 | | |
| As Amended | 1389 | 9-5-96 | Amended | 468 | |
| 13 KAR 2:070 | 1049 | | As Amended | 1929 | |
| Expired | | 9-13-96 | 301 KAR 2:176 | 217 | 9-11-96 |
| 40 KAR 1:040 | 206 | | 301 KAR 2:211 | | |
| 40 KAR 1:050 | 207 | | Repealed | 217 | 9-11-96 |
| 40 KAR 1:060 | 208 | | 301 KAR 2:140 | | |
| 40 KAR 1:070 | 209 | | Amended | 2200 | |
| 101 KAR 1:365 | | | 301 KAR 3:022 | | |
| Amended | 2193 | | Amended | 1619 | |
| 103 KAR 18:050 | | | 301 KAR 3:028 | | |
| Amended | 461 | | Amended | 471 | |
| As Amended | 1578 | 10-14-96 | As Amended | 1932 | |
| 104 KAR 1:020 | | | 301 KAR 4:200 | | |
| Amended | 166 | | Amended | 472 | |
| As Amended | 1391 | 9-11-96 | As Amended | 1933 | |
| 200 KAR 5:021 | | | 302 KAR 78:020 | 1471 | |
| Amended | 1403 | | As Amended | 1934 | |
| 200 KAR 5:025 | 1467 | | 307 KAR 2:020 | 1812 | |
| Amended | 1955 | | 401 KAR 5:001 | | |
| 200 KAR 5:302 | 1468 | | Amended | 1621 | |
| As Amended | 1924 | | 401 KAR 5:005 | | |
| 200 KAR 5:304 | | | Amended | 1633 | |
| Amended | 1401 | | 401 KAR 5:006 | 1814 | |
| 200 KAR 5:306 | | | 401 KAR 30:005 | 1052 | |
| Amended | 1405 | | 401 KAR 30:010 | | |
| As Amended | 1925 | | Amended | 475 | |
| 200 KAR 5:325 | 1470 | | 401 KAR 30:031 | | |
| 200 KAR 15:010 | | | Amended | 487 | |
| Amended | 462 | | 401 KAR 30:040 | | |
| As Amended | 1927 | | Amended | 490 | |
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| 201 KAR 1:040 | | | Amended | 492 | |
| Amended | 169 | | 401 KAR 31:005 | 1054 | |
| As Amended | 1393 | 9-11-96 | Amended | 1956 | |
| 201 KAR 1:045 | | | 401 KAR 31:010 | | |
| Amended | 464 | | Amended | 494 | |
| As Amended | 1578 | 9-13-96 | 401 KAR 31:030 | | |
| 201 KAR 1:130 | | | Amended | 509 | |
| Amended | 465 | | | | |
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| Amended | 511 | | Amended | 640 | |
| Amended | 1969 | | 401 KAR 34:230 | | |
| 401 KAR 31:050 | | | Amended | 644 | |
| Amended | 528 | | 401 KAR 34:240 | | |
| 401 KAR 31:060 | | | Amended | 649 | |
| Amended | 530 | | 401 KAR 34:245 | 1105 | |
| Amended | 1986 | | 401 KAR 34:250 | | |
| 401 KAR 31:070 | | | Amended | 653 | |
| Amended | 533 | | 401 KAR 34:275 | | |
| 401 KAR 31:110 | | | Amended | 655 | |
| Amended | 536 | | 401 KAR 34:280 | | |
| 401 KAR 31:120 | | | Amended | 663 | |
| Amended | 538 | | 401 KAR 34:281 | 1109 | |
| 401 KAR 31:160 | | | Amended | 2042 | |
| Amended | 546 | | 401 KAR 34:287 | 1118 | |
| 401 KAR 31:170 | | | 401 KAR 34:290 | | |
| Amended | 550 | | Amended | 669 | |
| 401 KAR 32:005 | 1067 | | 401 KAR 34:360 | | |
| Amended | 1989 | | Amended | 672 | |
| 401 KAR 32:010 | | | 401 KAR 35:005 | 1121 | |
| Amended | 559 | | Amended | 2051 | |
| 401 KAR 32:020 | | | 401 KAR 35:010 | | |
| Amended | 562 | | Amended | 680 | |
| 401 KAR 32:030 | | | 401 KAR 35:020 | | |
| Amended | 564 | | Amended | 683 | |
| 401 KAR 32:040 | | | 401 KAR 35:050 | | |
| Amended | 567 | | Amended | 687 | |
| 401 KAR 32:050 | | | Amended | 2065 | |
| Amended | 569 | | 401 KAR 35:060 | | |
| 401 KAR 32:100 | | | Amended | 690 | |
| Amended | 573 | | 401 KAR 35:070 | | |
| 401 KAR 33:005 | 1080 | | Amended | 694 | |
| Amended | 2003 | | 401 KAR 35:080 | | |
| 401 KAR 33:010 | | | Amended | 701 | |
| Amended | 577 | | 401 KAR 35:090 | | |
| 401 KAR 34:005 | 1093 | | Amended | 703 | |
| Amended | 2016 | | 401 KAR 35:100 | | |
| 401 KAR 34:010 | | | Amended | 710 | |
| Amended | 579 | | 401 KAR 35:120 | | |
| 401 KAR 34:020 | | | Amended | 717 | |
| Amended | 581 | | Amended | 2068 | |
| 401 KAR 34:050 | | | 401 KAR 35:180 | | |
| Amended | 586 | | Amended | 722 | |
| 401 KAR 34:060 | | | 401 KAR 35:190 | | |
| Amended | 589 | | Amended | 724 | |
| Amended | 2029 | | 401 KAR 35:200 | | |
| 401 KAR 34:070 | | | Amended | 731 | |
| Amended | 597 | | 401 KAR 35:210 | | |
| 401 KAR 34:080 | | | Amended | 735 | |
| Amended | 603 | | 401 KAR 35:230 | | |
| 401 KAR 34:090 | | | Amended | 738 | |
| Amended | 606 | | 401 KAR 35:245 | 1133 | |
| 401 KAR 34:100 | | | Amended | 2073 | |
| Amended | 613 | | 401 KAR 35:250 | | |
| 401 KAR 34:120 | | | Amended | 742 | |
| Amended | 621 | | 401 KAR 35:275 | | |
| Amended | 2037 | | Amended | 744 | |
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| Amended | 626 | | Amended | 751 | |
| 401 KAR 34:190 | | | 401 KAR 35:281 | 1137 | |
| Amended | 629 | | 401 KAR 35:290 | | |
| 401 KAR 34:200 | | | Amended | 757 | |
| Amended | 635 | | | | |

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| 401 KAR 36:020 | | | Amended | 986 | |
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| 401 KAR 36:025 | | | Amended | 2145 | |
| Amended | 783 | | 401 KAR 43:010 | 1219 | |
| 401 KAR 36:030 | | | 401 KAR 43:020 | 1222 | |
| Amended | 795 | | 401 KAR 43:030 | 1226 | |
| 401 KAR 36:070 | | | Amended | 2159 | |
| Amended | 797 | | 401 KAR 43:040 | 1231 | |
| 401 KAR 37:005 | 1166 | | Amended | 2163 | |
| Amended | 2089 | | 401 KAR 43:050 | 1233 | |
| 401 KAR 37:010 | | | 401 KAR 43:060 | 1235 | |
| Amended | 799 | | 401 KAR 43:070 | 1237 | |
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| 401 KAR 37:030 | | | Amended | 2165 | |
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| Amended | 925 | | Amended | 2167 | |
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| Amended | 2113 | | 401 KAR 44:060 | 1258 | |
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| 401 KAR 38:050 | | | Amended | 2203 | |
| Amended | 943 | | 415 KAR 1:050 | | |
| 401 KAR 38:060 | | | Amended | 2218 | |
| Amended | 949 | | 415 KAR 1:060 | | |
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| 401 KAR 38:080 | | | Amended | 2223 | |
| Amended | 959 | | 415 KAR 1:080 | | |
| 401 KAR 38:090 | | | Amended | 2226 | |
| Amended | 961 | | 415 KAR 1:090 | | |
| 401 KAR 38:100 | | | Amended | 2230 | |
| Amended | 965 | | 415 KAR 1:100 | | |
| 401 KAR 38:150 | | | Amended | 2232 | |
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| 401 KAR 38:160 | | | Amended | 2234 | |
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| 401 KAR 38:170 | | | Amended | 2239 | |
| Amended | 972 | | 415 KAR 1:120 | | |
| 401 KAR 38:190 | | | Amended | 2242 | |
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| Amended | 976 | | Amended | 1000 | |
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| Amended | 2132 | | Amended | 1409 | |
| 401 KAR 39:080 | | | 500 KAR 11:025 | | |
| Amended | 980 | | Amended | 1410 | |
| 401 KAR 39:110 | | | As Amended | 1935 | |
| Amended | 982 | | 500 KAR 11:030 | | |
| 401 KAR 39:120 | | | Amended | 1001 | |
| Amended | 983 | | As Amended | 1935 | |

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| 500 KAR 11:080 Amended | 1414 | | 601 KAR 11:020 Amended | 2260 | |
| As Amended | 1938 | | 601 KAR 13:025 Amended | 2261 | |
| 500 KAR 11:090 Amended | 1415 | | 601 KAR 13:070 Amended | 2264 | |
| 500 KAR 11:110 As Amended | 1938 | | 601 KAR 13:090 As Amended | 219 | |
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| 501 KAR 6:020 Amended | 175 | 9-11-96 | As Amended | 221 | |
| Amended | 1005 | 9-17-96 | Amended | 1399 | |
| Amended | 1416 | | As Amended | 1594 | 10-1-96 |
| Amended | 2250 | | 603 KAR 2:015 Amended | 1014 | |
| 501 KAR 6:040 Amended | 2252 | | As Amended | 1596 | 10-1-96 |
| 501 KAR 6:050 Amended | 1677 | | 603 KAR 4:040 Amended | 178 | 9-3-96 |
| 501 KAR 6:060 Amended | 2253 | | 603 KAR 5:066 Amended | 183 | 9-3-96 |
| 501 KAR 6:130 Amended | 1007 | | 603 KAR 5:115 Amended | 2266 | |
| As Amended | 1941 | | 603 KAR 5:230 Amended | 1419 | |
| Amended | 1678 | | Amended | 2171 | |
| 501 KAR 6:170 Amended | 1008 | | 603 KAR 5:330 Amended | 1818 | |
| As Amended | 1586 | 9-17-96 | 701 KAR 5:020 Amended | 1422 | |
| Amended | 2255 | | 701 KAR 5:051 Withdrawn | 1472 | 10-15-96 |
| 501 KAR 13:010 Amended | 1418 | | 701 KAR 5:055 Amended | 1423 | |
| 503 KAR 4:010 As Amended | 1587 | 9-17-96 | 701 KAR 5:065 Amended | 2350 | |
| 503 KAR 4:020 As Amended | 1284 | 9-17-96 | 701 KAR 5:086 Withdrawn | 1473 | 10-15-96 |
| 503 KAR 4:030 As Amended | 1587 | 9-17-96 | 701 KAR 5:090 Amended | 1425 | |
| 503 KAR 4:040 As Amended | 1587 | 9-17-96 | 702 KAR 1:080 Amended | 1426 | |
| 503 KAR 4:050 As Amended | 1286 | 9-17-96 | 702 KAR 3:100 Amended | 1428 | |
| 503 KAR 4:060 As Amended | 1588 | 9-17-96 | 702 KAR 3:130 Amended | 185 | 9-5-96 |
| 503 KAR 4:070 As Amended | 1288 | 9-17-96 | 702 KAR 3:270 Amended | 1429 | |
| 503 KAR 6:020 As Amended | 1589 | 9-17-96 | 702 KAR 3:285 Amended | 1474 | |
| 503 KAR 6:030 As Amended | 1290 | 9-17-96 | 702 KAR 4:150 Amended | 2351 | |
| 503 KAR 6:050 As Amended | 1291 | 9-17-96 | 702 KAR 5:130 Amended | 1431 | |
| 503 KAR 6:080 As Amended | 1590 | 9-17-96 | 702 KAR 5:150 Amended | 2268 | |
| 503 KAR 6:090 As Amended | 1291 | 9-17-96 | 702 KAR 7:010 Repealed | 1368 | 8-12-96 |
| 503 KAR 6:110 As Amended | 1590 | 9-17-96 | 702 KAR 7:020 Repealed | 1368 | 8-12-96 |
| 601 KAR 1:005 Amended | 2342 | | 702 KAR 7:050 Repealed | 1368 | 8-12-96 |
| 601 KAR 1:025 Amended | 2344 | | 702 KAR 7:065 Amended | 1433 | |
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| 601 KAR 1:101 Amended | 2346 | | 703 KAR 3:060 Amended | 2269 | |
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| 703 KAR 4:010 Amended | 2273 | | 803 KAR 2:312 Amended | 1713 | |
| 703 KAR 4:090 Amended | 2276 | | 803 KAR 2:313 Amended | 1714 | |
| 703 KAR 4:110 Amended | 2355 | | 803 KAR 2:314 Amended | 1716 | |
| 704 KAR 3:345 Amended | 2277 | | 803 KAR 2:315 Amended | 1719 | |
| 704 KAR 3:390 Amended | 186 | 9-5-96 | 803 KAR 2:316 Amended | 1720 | |
| 704 KAR 20:050 Repealed | 1292 | 10-3-96 | 803 KAR 2:317 Amended | 1722 | |
| 704 KAR 20:052 Amended | 1292 | 10-3-96 | 803 KAR 2:319 Amended | 1724 | |
| 704 KAR 20:260 Amended | 2280 | | 803 KAR 2:320 Amended | 1726 | |
| 704 KAR 20:460 Amended | 2282 | | 803 KAR 2:402 Amended | 1732 | |
| 704 KAR 20:475 Amended | 2356 | | 803 KAR 2:403 Amended | 1734 | |
| 704 KAR 20:670 Amended | 1017 | 10-3-96 | 803 KAR 2:404 Amended | 1735 | |
| 704 KAR 20:695 Amended | 2357 | | 803 KAR 2:408 Amended | 1740 | |
| 704 KAR 20:700 Amended | 2362 | | 803 KAR 2:410 Amended | 1741 | |
| 704 KAR 20:705 Amended | 2364 | | 803 KAR 2:422 Amended | 1743 | |
| 704 KAR 20:710 Amended | 2365 | | 803 KAR 2:425 Amended | 1744 | |
| 707 KAR 1:180 Amended | 1436 | | 803 KAR 2:500 Amended | 1746 | |
| 735 KAR 1:010 Amended | 1443 | | 803 KAR 2:600 Amended | 1748 | |
| 735 KAR 1:020 Amended | 1447 | | 803 KAR 25:012 Amended | 1450 | |
| 781 KAR 1:030 Amended | 2283 | | 803 KAR 25:015 Amended | 2173 | |
| 785 KAR 1:010 Amended | 1679 | | 803 KAR 25:035 Amended | 1475 | |
| 787 KAR 1:200 Amended | 1681 | | 803 KAR 25:089 Amended | 1750 | |
| 787 KAR 1:210 Amended | 189 | 10-14-96 | 803 KAR 25:096 Amended | 1455 | |
| 803 KAR 2:019 Amended | 1682 | | 803 KAR 25:190 Amended | 2177 | |
| 803 KAR 2:200 Amended | 1684 | | 803 KAR 50:010 Amended | 1459 | |
| 803 KAR 2:300 Amended | 1687 | | 804 KAR 4:330 Amended | 2181 | |
| 803 KAR 2:301 Amended | 1689 | | 804 KAR 11:010 Amended | 1463 | |
| 803 KAR 2:302 Amended | 1690 | | 804 KAR 13:010 As Amended | 1477 | |
| 803 KAR 2:303 Amended | 1692 | | 805 KAR 4:085 Amended | 1751 | |
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| 808 KAR 10:260 | | | Amended | 2305 | |
| Amended | 2286 | | 902 KAR 20:320 | | |
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| Amended | 2287 | | Amended | 1785 | |
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| Amended | 2290 | | 905 KAR 1:320 | | |
| 815 KAR 8:010 | | | Amended | 1786 | |
| As Amended | 436 | 9-11-96 | 905 KAR 1:360 | 1484 | |
| 815 KAR 8:020 | | | As Amended | 1952 | |
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| Amended | 1769 | | 907 KAR 1:035 | | |
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| Amended | 1780 | | 907 KAR 1:140 | | |
| 900 KAR 1:015 | | | Amended | 1801 | |
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