

of **Administrative Register** *of Kentucky*

LEGISLATIVE RESEARCH COMMISSION FRANKFORT, KENTUCKY

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This is an official publication of the Commonwealth of Kentucky, Legislative Research Commission, giving public notice of all proposed regulations filed by administrative agencies of the Commonwealth pursuant to the authority of Kentucky Revised Statutes Chapter 13.

Persons having an interest in the subject matter of a proposed regulation published herein may request a public hearing or submit comments within 30 days of the date of this issue to the official designated at the end of each proposed regulation.

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

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Public Hearing Scheduled

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

A public hearing will be held at 10:00 a.m. EDT June 15-16, 1978, in the auditorium of the State Office Building, Holmes Street, Frankfort, Kentucky 40601 on the following proposed regulations published in this issue:

405 KAR 1:010 to 405 KAR 1:250. Surface mining.
405 KAR 3:010 to 405 KAR 3:190. Surface effects of underground mining.

JULIAN M. CARROLL, GOVERNOR
Executive Order 78-297
April 19, 1978

EMERGENCY REGULATION Executive Department for Finance and Administration Reimbursement of Law Enforcement Officers

WHEREAS, KRS 29A.180, as amended by the 1978 General Assembly, requires the Executive Department for Finance and Administration to promulgate regulations establishing the method of reimbursing law enforcement officers for expenses incurred for sequestered jurors, for transporting jurors or other authorized persons to views of the scene as authorized by KRS 29A.310, and for providing specialized security personnel, equipment, or services to the court upon its request; and

WHEREAS, the Secretary of the Executive Department for Finance and Administration has determined that a delay in promulgating the regulations required by the 1978 General Assembly would subject State agents and employees to the burden of bearing the expense of the conduct of the public's business while in the course of their employment and discharge of their official duties:

NOW, THEREFORE, I, JULIAN M. CARROLL, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of emergency by the Secretary of the Executive Department for Finance and Administration with respect to the filing of said regulation as required by the 1978 General Assembly, thereby promulgating a new regulation which will provide for the reimbursement of State law enforcement officers for expenses relating to jurors, and direct that said regulation be effective upon filing with the Legislative Research Commission as provided by Chapter 13 of the Kentucky Revised Statutes.

JULIAN M. CARROLL, Governor
DREXELL R. DAVIS, Secretary of State

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION Bureau of Administrative Services Division of Accounts

200 KAR 8:020E. Reimbursement to law enforcement officers for certain expenses.

RELATES TO: KRS 29A.180
PURSUANT TO: KRS 29A.180
EFFECTIVE: April 21, 1978
EXPIRES: August 19, 1978

NECESSITY AND FUNCTION: KRS 29A.180, as amended by the 1978 General Assembly, requires the Executive Department for Finance and Administration to promulgate regulations establishing the method of reimbursing law enforcement officers for expenses incurred for sequestered jurors, for transporting jurors or other authorized persons to views of the scene, for providing specialized security personnel, equipment, or services to the court.

Section 1. The sheriff, city police or city marshal, as appropriate, shall be responsible for meals, housing, and other incidental needs of grand jurors and petit jurors in circuit court and in district court when the jurors are kept overnight or otherwise sequestered when ordered to do so by the judge of the court for which the jurors were summoned. Each officer, upon presenting the Executive Department for Finance and Administration an order of the court requiring such service, shall be reimbursed as follows:

(1) For the actual cost of meals, tips, and delivery service upon the presentation of an invoice for such expense. This includes only those meals for jurors and does not include meals for the officer or any guards employed.

(2) For the actual cost of housing jurors upon the presentation of an invoice for such expense. This includes only housing for jurors and does not include housing for the officer or any guards employed.

(3) For any other expense incurred in service to sequestered grand or petit jurors upon the presentation of an

invoice for such expense. This includes only those expenses for jurors and does not include expenses for the officer or any guards employed.

Section 2. The Sheriff, city police or city marshal, as appropriate, shall be responsible for the transportation of jurors and other authorized persons to views of the scene or other locations authorized by the court pursuant to KRS 29A.310. In criminal cases, cases conducted under the Eminent Domain Act of Kentucky, and civil cases in which the Commonwealth requests the viewing, each officer, upon presenting the Executive Department for Finance and Administration an order of the court requiring such service, shall be reimbursed for each vehicle used at the rate set forth in KRS 64.070 for transporting a prisoner to the penitentiary.

Section 3. The sheriff, city police or city marshal, as appropriate, shall be responsible for providing any specialized security personnel, equipment and services which the judge, with the consent of the Chief Justice shall deem necessary for the conduct of a trial in which the judge believes that special security precautions are necessary or desirable. Each officer, upon presenting the Executive Department for Finance and Administration an order of the court requiring such service and a copy of any correspondence of the Chief Justice consenting to such service, shall be reimbursed as follows:

(1) For specialized security personnel the rate authorized by KRS 64.348 for court attendance.

(2) For equipment and services requested by the judge, a reasonable rate to be fixed by the judge and entered upon the order book of the court.

RUSSELL McCLURE, Secretary

ADOPTED: April 17, 1978

RECEIVED BY LRC: April 21, 1978 at 10:15 a.m.

JULIAN M. CARROLL, GOVERNOR
Executive Order 78-338
May 3, 1978

EMERGENCY REGULATIONS
Department for Natural Resources
and Environmental Protection
Regulations Concerning Surface
Effects of Coal Mining

WHEREAS, the Federal Surface Mining Control and Reclamation Act of 1977 requires the Commonwealth to promulgate regulations relating to mining which are consistent with federal requirements; and

WHEREAS, the Federal Act requires compliance through the development of an interim regulatory program by May 3, 1978 to assure temporary primacy; and

WHEREAS, Senate Bill 273 passed by the Kentucky General Assembly has a May 3, 1978, effective date to allow compliance with the Federal Act; and

WHEREAS, regulations pursuant to authority granted in Senate Bill 273 may not be filed until its May 3, 1978, effective date, but must be effective on that date to assure compliance with federal requirements:

NOW, THEREFORE, I, JULIAN M. CARROLL, Governor of the Commonwealth of Kentucky, by the authority vested in me by Section 13.085(2) of the Kentucky Revised Statutes, hereby acknowledge the finding of the Department for Natural Resources and Environmental Protection that an emergency exists and direct that the attached Regulations become effective immediately upon being filed in the Office of the Legislative Research Commission.

JULIAN M. CARROLL, Governor
DREXELL R. DAVIS, Secretary of State

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:010E. Definitions.

RELATES TO: KRS Chapter 350

PURSUANT TO: KRS 13.082, 350.028

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation defines essential terms used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in this chapter or otherwise clearly indicated by their context, terms in this chapter shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by strip mining operations.

(2) "Acid-producing" or "acid-forming materials" means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

(3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, (when not necessary to support its approved postmining use) closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the department determines that they are in compliance with 405 KAR 1:220.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which overburden is to be or has been deposited and shall include all lands affected by the construction of new roads or the improvement or use of existing roads other than public roads, to gain access and to haul coal.

(5) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

(6) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes laterally into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(7) "Bench" means the ledge, shelf or terrace formed in the contour method of strip mining.

(8) "Bureau" means the Bureau of Surface Mining

Reclamation and Enforcement, Department for Natural Resources and Environmental Protection.

(9) "Coal" means combustible, carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by American Society for Testing Materials designation 0-388-66.

(10) "Combustible material" means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

(11) "Commissioner" means the Commissioner of the Bureau of Surface Mining Reclamation and Enforcement of the Department for Natural Resources and Environmental Protection.

(12) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally done by running heavy equipment over the earth materials.

(13) "Degree" means the angular measurement of land slope from the horizontal, and in each case shall be subject to a tolerance of five (5) percent of error.

(14) "Department" means the Department for Natural Resources and Environmental Protection.

(15) "Disturbed area" means those lands that have been affected by strip mining and reclamation operations.

(16) "Diversion" means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.

(17) "Downslope" means the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall.

(18) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(19) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(20) "Fill bench" means that portion of the bench which is formed by depositing overburden beyond the cut section.

(21) "Final grade" means the finished elevation of any surface disturbance prior to replacement of topsoil.

(22) "Ground water" means subsurface water that fills available openings in rock or soil material such that they may be considered water-saturated.

(23) "Gully erosion" means the erosion process whereby water accumulates in narrow channels over short periods and removes the soil from this narrow area to depths greater than one (1) foot.

(24) "Highwall" means the face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.

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

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

(27) "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of Public

Law 95-87 in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

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

(29) "Intermittent or perennial stream" means a watercourse or part of a watercourse that flows continuously during all (perennial) or for at least one (1) month (intermittent) of the calendar year as a result of ground water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one (1) month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

(30) "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

(31) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the coal.

(32) "Noxious plants" means species that have been included on official state lists of noxious plants for the State of Kentucky.

(33) "Operations" means all of the premises, facilities, roads and equipment used in the process of producing coal from a designated strip mine area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal.

(34) "Operator" means any person engaged in strip mining who removes or intends to remove more than 250 tons of coal from the earth by strip mining within twelve (12) successive calendar months or who removes overburden for the purpose of determining the location, quality or quantity of a natural coal deposit.

(35) "Outslope" means the exposed area sloping away from a bench or terrace being constructed as a part of a strip mining and reclamation operation.

(36) "Overburden" means all of the earth and other materials which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of strip mining.

(37) "Permit" means the written document issued by the department to the permittee pursuant to this chapter.

(38) "Permittee" means any person holding a valid permit to conduct strip mining and reclamation operations issued by the department pursuant to this chapter.

(39) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization.

(40) "Productivity" means the vegetative yield produced by a unit area for a unit of time.

(41) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(42) "Reclamation" means the reconditioning of the area affected by strip mining under a plan approved by the department.

(43) "Recurrence interval" means the precipitation event expected to occur, on the average, once in a specified interval. For example, the ten (10) year, twenty-four (24) hour precipitation event would be that twenty-four (24) hour precipitation event expected to be exceeded on the average once in ten (10) years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U. S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

(44) "Rill erosion" means an erosion process in which numerous small channels only several inches deep are formed.

(45) "Roads" means access and haul roads constructed, used, reconstructed, improved, or maintained for use in strip mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within forty-five (45) days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all federal, state, county, or local roads are excluded from this definition.

(46) "Runoff" means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

(47) "Safety factor" means the ratio of the available shear strength to developed shear stress on a potential surface of sliding determined by accepted engineering practice.

(48) "Secretary" means the Secretary of the Department for Natural Resources and Environmental Protection.

(49) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(50) "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

(51) "Sheet erosion" means an erosion process whereby a uniform layer of soil is removed from the land surface by runoff water.

(52) "Significant, imminent environmental harm to land, air or water resources" is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including but not limited to plant and animal life.

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

1. Is causing such harm; or

2. May be reasonably expected to cause such harm at any time before the end of the reasonable abatement time, that would be set under section 521(a)(3) of Public Law 95-87.

(c) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(53) "Slope" means average inclination of a surface, measured from the horizontal, normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v to 5h = 20 percent = 11.3 degrees).

(54) "Soil horizons" means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

(a) "A horizon." The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in

which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.

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

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

(55) "Spoil" means overburden that has been removed during strip mining.

(56) "Stabilize" means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

(57) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a land owner for his own noncommercial use from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under regulations established by the department nor shall it include the surface effects or surface impacts of underground coal mining.

(58) "Subirrigation" means irrigation of plants with water delivered to the roots from underneath.

(59) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

(60) "Surface coal mining operations" means:

(a) Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds ($16 \frac{2}{3}$) percent of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration subject to Section 512 of Public Law 95-87; and

(b) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, pro-

cessing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to such activities.

(61) "Surface water" means water, either flowing or standing, on the surface of the earth.

(62) "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

(63) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or micro-biological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(64) "Toxic-mine drainage" means water that is discharged from active or abandoned mines and other areas affected by strip mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(65) "Valley fill and head-of-hollow fill" means a structure consisting of any materials other than waste placed so as to encroach upon or obstruct to any extent any watercourse other than those minor watercourses located on highland areas where overland flow in natural rills and gullies is the predominant form of runoff. For example, such fills are normally constructed in the uppermost portion of a V-shaped valley in order to reduce the upstream drainage area (head-of-hollow fills). Fills located further downstream (valley fills) must have larger diversion structures to minimize infiltration. Both fills are characterized by rock underdrains and are constructed in compacted lifts from the toe to the upper surface in a manner to promote stability.

(66) "Waste" means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, washed or otherwise separated from product coal and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

(67) "Water table" means upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:020E. General provisions.

RELATES TO: KRS Chapter 350

PURSUANT TO: KRS 13.082, 350.028

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip min-

ing of coal. This regulation set forth general provisions which apply in this chapter with regard to applicability, compatibility, conflicting provisions, severability, obligations of operators, and reporting requirements.

Section 1. Applicability. The regulations in this chapter shall apply to all operations for the strip mining of coal conducted on or after May 3, 1978, on lands from which coal has not yet been removed and to any other lands used, disturbed, or redisturbed in connection with or to facilitate the strip mining of coal or to comply with the requirements of KRS Chapter 350 or the requirements of this chapter except:

(1) The extraction of coal by a land owner for his own noncommercial use from land owned or leased by him;

(2) The extraction of coal as an incidental part of highway or other construction financed by federal, state or local governments;

(3) The extraction of coal in any operation or activity in which are extracted 250 tons or less of coal within a period of twelve (12) consecutive calendar months; and

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16 2/3) percent of the total mineral tonnage extracted for commercial use or sales.

Section 2. Compatibility with Public Law 95-87. The provisions of this chapter are to be construed as compatible with federal regulations adopted pursuant to Public Law 95-87, the "Surface Mining Control and Reclamation Act of 1977" and the department may amend the regulations of this chapter to achieve conformity and compatibility with such federal regulations.

Section 3. Conflicting Provisions. The provisions of this chapter are to be construed as being compatible with and complimentary to each other. In the event that provisions within this chapter are found to be contradictory, the more stringent provisions shall apply.

Section 4. Severability. In the event that any provision or regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 5. Obligations of Operators. General obligations:

(1) No person or operator shall engage in strip mining for coal without having obtained from the department a valid permit covering the area of land to be affected.

(2) A person or operator engaged in the strip mining of coal shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to KRS 350.060, nor place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to KRS 350.060.

(3) A person or operator engaged in strip mining for coal shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(4) A person or operator engaged in strip mining for coal

shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(5) On and after May 3, 1978, any person or operator engaged in strip mining for coal shall comply with the requirements of this chapter, except when compliance with the requirements of this chapter would preclude compliance with the requirements of Public Law 95-87, August 3, 1977, the "Surface Mining Control and Reclamation Act of 1977," and regulations adopted pursuant thereto.

(6) Upon development of any emergency conditions which threaten the life, health, or property of the public, the operator shall immediately notify the persons whose life, health or property are so threatened, shall take any and all reasonable actions to eliminate the conditions creating the emergency, and shall immediately provide notice of the emergency conditions to the department to local law enforcement officials and to appropriate local government officials. Any emergency action taken by an operator pursuant to this paragraph shall not relieve the operator of other obligations under this chapter or of obligations under other applicable local, state or federal laws and regulations.

(7) Compliance with this chapter does not relieve any person or operator from compliance with other applicable regulations of the department.

Section 6. Reporting Requirements. (1) Annual report of mining and reclamation. Any operator or person holding a valid strip mining permit pursuant to KRS 350.060 and regulations adopted pursuant thereto shall submit, in a form and manner prescribed by the department, a report of all mining and reclamation operations conducted pursuant to the permit in the preceding twelve (12) month period. Such report shall be submitted not later than thirty (30) days after the end of each anniversary date of the permit. However, when the operator requests renewal of the permit pursuant to Section 8 of 405 KAR 1:050, and such information as is required in this subsection has been provided in the request for renewal, the requirement for such report for the preceding twelve (12) month period shall be deemed satisfied. The report shall contain, but shall not be limited to the following information:

- (a) The identification of the operation;
- (b) Such maps as may be required by the department;
- (c) The area of land mined, backfilled and regraded;
- (d) The area of land planted or seeded;
- (e) The type of planting or seeding, including mixtures and rates of application of plants, seed, lime, fertilizers, inoculants and other agents;
- (f) The dates of planting or seeding;
- (g) The status of all sediment ponds and hollow fills; and
- (h) Such additional information as the department may require.

(i) Such reports shall be certified by the operator as to accuracy.

(2) Mine map. Any operator or person conducting strip mining and reclamation operations on and after May 3, 1978, shall submit to the department before July 3, 1978, an accurate map of the mine and permit area at a scale between 1:6000 and 1:200. The map shall show as of May 3, 1978, the lands from which coal has not yet been removed and the lands and structures which have been used or disturbed to facilitate mining.

(3) Other reports required. The operator shall submit such other reports, documentation, certifications, or other

information as the department may require, or as may be required by KRS Chapter 350 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:030E. Small operator exemption.

RELATES TO: KRS 350.450

PURSUANT TO: KRS 13.082, 350.028, 350.450

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth conditions for the exemption of qualified small operators from certain provisions of this chapter.

Section 1. Applicability. If a person or operator is an eligible permittee under Section 2 of this regulation, and intends to engage in strip mining for coal on or after May 3, 1978, the department may certify the permittee as qualified to receive a limited exemption from the provisions of this chapter. The exemption:

(1) Shall not relieve the permittee of his obligations under the terms of the permit, his obligations to comply with the mining and reclamation plan approved by the department, or other obligations imposed upon him by KRS Chapter 350 or other laws and regulations in effect at the time of issuance of the permit;

(2) Shall not relieve the permittee of his obligations imposed by 405 KAR 1:020, Section 5(c), (d) and (e) regarding operations which create imminent danger to the health and safety of the public or significant, imminent environmental harm to land, air or water resources;

(3) Shall not apply to operations conducted pursuant to a permit issued on or after August 3, 1977;

(4) Shall not include the provisions of 405 KAR 1:230, Section 1(1) regarding the placement of spoil or other material on downslopes in steep slope areas; and

(5) Shall exempt the permittee from the requirement of regulations 405 KAR 1:070 through 405 KAR 1:250 of this chapter except as provided in subsection (4) of this section.

Section 2. Eligibility. A permittee is eligible for an exemption under this regulation if:

(1) The actual and attributed production of that permittee is estimated by the department and the Director of the Office of Surface Mining of the U.S. Department of Interior not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and

(2) If that permittee:

(a) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that permittee was 100,000 tons of coal or less

from all surface and underground coal mining operations; or

(b) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all surface and underground coal mining operations of that permittee in the average calendar month was an amount of coal which when multiplied by twelve (12) yields a product of 100,000 tons or less; and

(c) In the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.

Section 3. Applications. Applications for an exemption under this section shall be submitted to the Director of the Office of Surface Mining of the U.S. Department of Interior and to the Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Frankfort, Kentucky 40601 by March 1, 1978, or such other date as established by the Office of Surface Mining.

Section 4. Request. The request for exemption shall be in the form of an affidavit and shall include:

(1) The name and address of the permittee and of persons who control the permittee by reason of stock ownership or otherwise.

(2) The name, location, Mine Safety and Health Administration identification numbers, and permit numbers of the surface coal mining operations for which exemption is sought, including a statement of the dates each permit was issued or renewed and will expire.

(3) The date and method of creation and business organization arrangement if the permittee is not an individual.

(4) A listing of all surface and underground coal mining operations showing:

(a) Actual production for the year ending July 31, 1977, attributed to the permittee and the inclusive dates of operation.

(b) Estimated production for the year ending December 31, 1978, attributed to the permittee and the anticipated dates of operation.

(5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the permittee has published in a local newspaper of general circulation in the area of each mine for which an exemption is sought once a week for two (2) weeks stating:

(a) That an application for a small operator exemption will be filed, which if granted would exempt the operator from certain environmental protection performance standards in the Public Law 95-87;

(b) The name and address of the permittee;

(c) The location of the surface coal mining operations to which the exemption will apply; and

(d) That public comments may be submitted to the Director, Office of Surface Mining Reclamation and Enforcement.

(7) Production from the following operations shall be attributed to the permittee as follows:

(a) All coal produced by operations beneficially owned entirely by the permittee, or controlled by reasons of ownership, direction of the management, or in any other manner by the permittee.

(b) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a five (5) percent interest.

(c) All coal produced by persons who own more than five (5) percent of the permittee or who directly or indirectly control the permittee by reason of stock ownership, direction of the management or in any other manner.

(d) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the permittee.

Section 5. (1) The department shall certify the applicant as qualified for the exemption if, based upon comments from the Office of Surface Mining or the public, or any other information, it finds that:

(a) The permittee has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(b) The exemption will not be inconsistent with state or federal law, regulation or permit terms.

(2) The exemption shall be effective on the date approved and shall remain in effect until expiration of the permit to which it applies, December 31, 1978 or until revoked, whichever is earlier.

(3) The department shall revoke the qualification for the exemption upon finding that the qualification was erroneously issued or that the exempted operation has or will produce more than 100,000 tons of coal per year.

(4) Any person aggrieved by the decision of the department under this section may appeal within thirty (30) days from receipt of that decision to Franklin Circuit Court pursuant to KRS 350.032(2).

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:040E. Operations affecting two acres or less.

RELATES TO: KRS 350.400

PURSUANT TO: KRS 13.082, 350.028, 350.060(10)

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for strip mining operations which affect two acres or less.

Section 1. Definitions. The definitions of terms as stated in 405 KAR 1:010 shall apply with respect to this regulation except as otherwise specifically stated in this regulation or except as otherwise clearly indicated by the context of use of such terms in this regulation.

Section 2. General Provisions. (1) Applicability:

(a) This regulation shall apply to operations for the strip mining of coal which would affect two (2) acres or less, including areas to be mined, spoil disposal areas, access and haul roads, and other surface operations and facilities

directly associated with the mining operation which are located contiguous to or in the immediate vicinity of the mining operation.

(b) This regulation shall not apply when complete feasible recovery of the coal resource at the proposed location would require operations which would affect more than two (2) acres, and the department reasonably expects that other proposals to strip mine coal in the immediate vicinity will be forthcoming in order to complete the feasible recovery of the coal resource.

(c) No permit will be issued pursuant to this regulation to strip mine an area located within 200 feet of another operation for which a permit has been issued pursuant to this regulation.

(d) The provisions of this regulation shall apply only to strip mining operations for which permits are issued on or after May 3, 1978.

(2) General obligations. The obligations imposed upon all operators by 405 KAR 1:020, Section 5(1)(a), (b), (c), (d), (f), and (g) and the reporting requirements of 405 KAR 1:020, Section 6(1) and (3), shall apply with respect to this regulation.

Section 3. Permit Requirements. (1) The provisions of 405 KAR 1:050 shall apply with respect to this regulation, except as otherwise provided in this section.

(2) Those provisions of 405 KAR 1:050 which are listed in this subsection shall not apply with respect to this regulation:

(a) 405 KAR 1:050, Section 4(6), with regard to prime farmland;

(b) 405 KAR 1:050, Section 4(7), with regard to postmining land use;

(c) 405 KAR 1:050, Section 4(13)(b), with regard to water quality standards and surface water monitoring; and

(d) 405 KAR 1:050, Section 4(14), with regard to ground water.

Section 4. Environmental Protection Performance Standards. (1) The environmental protection performance standards set forth in this chapter in regulations 405 KAR 1:070 to 405 KAR 1:250, inclusive, shall apply with respect to this regulation except as provided in this section.

(2) Those provisions of 405 KAR 1:070 to 405 KAR 1:250, inclusive, which are listed in this subsection, shall not apply with respect to this regulation except as herein provided:

(a) Postmining land use. 405 KAR 1:070 shall not apply with respect to this regulation. No provision of this chapter which imposes requirements related to postmining land use shall apply with respect to this regulation.

(b) Water quality standards and surface water monitoring:

1. The provisions of 405 KAR 1:170 shall not apply with respect to this regulation.

2. The department may require that the permittee monitor the quality of water discharges from the permit area in a manner prescribed by the department and submit to this department such monitoring reports as the department may require. The parameters to be monitored may include total iron, total manganese, total suspended solids, and pH.

(c) Ground water. The provisions of 405 KAR 1:180 shall not apply with respect to this regulation.

(d) Sediment control measures. The provisions of 405 KAR 1:200, Section 1(2), requiring sedimentation ponds shall not apply with respect to this regulation, except that the department may require the construction of sedimenta-

tion ponds when necessary to prevent excessive contributions of suspended solids to surface runoff from the permit area. Criteria required for design and construction of sedimentation ponds pursuant to this paragraph shall not be more stringent than criteria provided in 405 KAR 1:200.

(e) Prime farmland. The provisions of 405 KAR 1:250 shall not apply with respect to this regulation.

Section 5. (1) Variances. The department may at its discretion waive any provision of this chapter with respect to this regulation, except the provisions of 405 KAR 1:020, Section 5(1)(a), (b), (c), (d), (f), and (g); 405 KAR 1:050, Section 1; and 405 KAR 1:060, upon a written finding by the department that the public and the environment will in the absence of such provisions be provided adequate protection consistent with the purpose of this chapter.

(2) In any permit issued pursuant to this regulation, the department shall not impose requirements more stringent than provided in this regulation.

Section 6. Inspection and Enforcement Procedures. The provisions of 405 KAR 1:060 shall apply with respect to this regulation.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 1:050E. Permit requirements.

RELATES TO: KRS 350.060

PURSUANT TO: KRS 13.082, 350.028

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth procedures and requirements related to permits.

Section 1. Permit required. (1) No person shall engage in strip mining of coal without having first obtained a permit from the department.

(2) The permit shall authorize the permittee to engage in strip mining of coal upon the area described in his application for a period of two (2) years from the date of issuance.

(3) Valid permits in effect on May 4, 1978, which were originally issued on or after May 4, 1977, shall be valid for a period of two (2) years from the date of issuance. These permits shall authorize strip mining operations on an area and during a time period for which the operator has posted appropriate bond coverage.

(4) The permit shall confer upon the operator a qualified right to strip mine coal, but shall not relieve the operator of responsibility to comply with all applicable federal, state and local laws and regulations.

Section 2. Preliminary Requirements. A person desiring a permit shall submit to the department a preliminary application of the form and content prescribed by the department. The preliminary application shall contain pertinent information including, but not limited to, a U.S. Geological survey 7½-minute topographic map marked to show the approximate boundaries of the area of land to be affected, and the approximate locations of the coal seam(s) to be mined, access roads, haul roads, soil disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the department. Personnel of the department shall conduct an on-site investigation of the area with the person or his representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 3. Publication of Notice of Intention to Mine. (1) A prospective applicant for a permit required by KRS 350.060 shall publish at least once a public notice of his intention to file an application for that permit. Such publication shall be made by advertisement in a newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed mining site is located.

(2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled "Notice of Intention to Mine" and shall be in a manner and form prescribed by the department and shall include, though not be limited to, the following:

- (a) The name and address of the applicant;
- (b) The permit application number;
- (c) The location of the proposed mining site;
- (d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed operation.

(4) The applicant for a permit required by KRS 350.060 shall establish the date and place at which the "Notice of Intention to Mine" was published by attaching to his application an affidavit from the publishing newspaper certifying the time, place and content of the published notice.

Section 4. Permit Application. (1) A person desiring a permit shall submit an application of form and content as prescribed by the department. The application shall be on forms provided by the department, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the department with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the department may require.

(2) The application shall include, but not be limited to, the information described in subsections (2) through (16) of this section:

- (a) The location and area of land to be affected by the operation, with a description of access to the site from the nearest public highway;
- (b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area within 500 feet of any part of the affected area;
- (c) The owner or owners of the coal to be mined;
- (d) The source of the applicant's legal right to mine coal on the land affected by the permit;

(e) The main and local post-office address of the applicant;

(f) Whether or not the applicant or any person associated with the applicant, as specified in subsection (2)(g), holds or has held any other permits under KRS Chapter 350, and an identification of such permits;

(g) Whether or not the applicant is in compliance with KRS 350.130(3) regarding past suspensions or revocations of permits, forfeitures of bond, or repeated non-compliance or violation, and whether or not every officer, partner, director or any individual owning of record or beneficially (alone or with associates) if known, ten (10) percent or more of any class of stock of the applicant, is subject to any of the provisions of KRS 350.130(3) and he shall so certify;

(h) A copy of the applicant's published notice of intention to mine and an affidavit from the publisher, pursuant to Section 3 of this regulation.

(3) Maps. The application shall include or be accompanied by five (5) copies of a United States Geological Survey 7½-minute topographic map or other such map acceptable to the department on which the operator has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.

(4) Enlarged maps. The application shall include or be accompanied by five (5) copies of an enlarged United States Geological Survey 7½-minute topographic map or other such map acceptable to the department meeting the requirements of paragraphs (a) through (h) of this subsection. The map shall:

(a) Be prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. The certification shall read as follows, "I, the undersigned, hereby certify that his map is correct, and shows to the best of my knowledge and belief all the information required by the strip mining laws of this state." The certification shall be signed and notarized. The department may reject any map as incomplete if its accuracy is not so attested.

(b) Identify the area of land to be affected to correspond with the application.

(c) Show adjacent underground mining and the boundaries of surface properties and names of owners on the affected area and within 500 feet of any part of the affected area.

(d) Be of a scale between 400 feet to the inch and 600 feet to the inch.

(e) Show the names and locations of all streams, lakes, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, public parks, public property, and utility lines on the area of land affected and within 500 feet of such area.

(f) Show by appropriate markings the boundaries of the area of land to be affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land to be affected.

(g) Show the date on which the map was prepared, the north point and the quadrangle name.

(h) Show the drainage plan on and away from the area of land to be affected. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(5) Transportation plan. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published

by the Kentucky Department of Transportation) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the strip mining operation.

(a) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(b) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(c) The plan shall contain a certification by a duly authorized official of the Kentucky Department of Transportation attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

(6) Prime farmland. The application will include or be accompanied by either:

(a) A negative declaration of prime farmland consistent with the requirements of 405 KAR 1:250, Section 4; or

(b) A plan for the mining and restoration of prime farmland consistent with the requirements of 405 KAR 1:250, Sections 5, 6, and 7.

(7) Postmining land use plan. The application shall include or be accompanied by a plan for postmining land use which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:070 regarding postmining land use.

(8) Use of explosives plan. The application shall include or be accompanied by a plan for use of explosives which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:090 with regard to use of explosives.

(9) Topsoil handling plan. The application shall include or be accompanied by a plan for the handling of topsoil which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:100 with regard to topsoil handling.

(10) Backfilling and grading plan. The application shall include or be accompanied by a plan for backfilling and grading which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:130 with regard to backfilling and grading.

(11) Spoil disposal plan. The application shall include or be accompanied by a plan for the disposal of spoil in excess of that required to meet the backfilling and grading requirements of 405 KAR 1:130 which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:140 with regard to disposal of spoil.

(12) Plan for handling of waste materials and acid-forming and toxic-forming materials. The application shall include a plan for the handling of acid-forming or toxic-forming materials, waste materials or other unstable materials which shall demonstrate to the satisfaction of the department that the operation will comply with the requirements of 405 KAR 1:150 with regard to waste materials and acid and toxic materials.

(13) Surface water control and monitoring plan. The application shall contain or be accompanied by a plan for the control and monitoring of surface water, which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of:

(a) 405 KAR 1:160 with regard to protection of the hydrologic system;

(b) 405 KAR 1:055 with regard to water quality standards and surface water monitoring;

(c) 405 KAR 1:060 with regard to sediment control measures; and

(d) 405 KAR 1:190 with regard to diversions of surface flows.

(14) Ground water control and monitoring plan. The application shall include or be accompanied by a plan for the control and monitoring of ground water, which shall demonstrate to the satisfaction of the department that the operation will comply with the requirements of:

(a) 405 KAR 1:160 with regard to protection of the hydrologic system;

(b) 405 KAR 1:180 with regard to ground water; and

(c) 405 KAR 1:190 with regard to diversion of underground flows.

(15) Revegetation plan. The application shall include or be accompanied by a revegetation plan which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:110 with regard to revegetation.

(16) In the required operational plans specified in subsections (5) through (15) of this section and in the other requirements of this section, the department may require all such supporting documentation as the department may deem necessary to insure that the provisions of this chapter will be met. Such documentation may include but not be limited to detailed engineering drawings, engineering calculations, and documentation prepared by qualified persons in other appropriate technical fields or sciences.

(17) Fees. On and after June 17, 1978, as provided by KRS 350.060, the application shall be accompanied by a cashier's check or money order payable to the Kentucky State Treasurer in the amount of \$250 plus fifty dollars (\$50) for each acre or fraction thereof of the area of land to be affected by the operation. No permit application shall be processed unless such fees have been paid.

(18) Bonds:

(a) The operator shall file with the department a bond payable to the Commonwealth of Kentucky, with surety satisfactory to the department, in the penal sum to be determined by the department on the recommendation of the secretary, of not less than \$500 nor more than \$3,000 for each acre or fraction thereof of the area of land affected, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in KRS Chapter 350 and of the rules and regulations promulgated pursuant thereto in this chapter.

(b) In determining the amount of bond within the limits in paragraph (a) of this subsection, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, and reclamation to be required as provided in this chapter.

(c) In a particular instance where the circumstances are such as to warrant an exception, the department may in its discretion reduce the amount of the bond for a particular operation to less than the minimum required in paragraph (a) of this subsection.

Section 5. Procedures for Processing of Application.

(1) Five (5) complete, but separate and distinct copies of the application shall be submitted to the department at the location and address prescribed by the department. The department will provide written acknowledgment of receipt of the application.

(2) Within thirty (30) working days the department shall either:

(a) Issue a permit to the applicant, or deny the application; or

(b) Notify the applicant in writing, of any proposed modifications to the application, and allow it to be temporarily withdrawn for that purpose.

(c) Temporary withdrawal periods shall not be considered in computation of the thirty (30) working days.

(3) If the department denies an application, it shall set forth in writing the reasons for the denial.

(4) Hearings:

(a) An applicant aggrieved by the actions of the department pursuant to subsection (3) may by written notice request that a hearing be conducted by the department. The right to demand such 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 such notice. The department shall schedule a hearing before the department not less than twenty-one (21) days after notice of demand for such a hearing. 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 regulations involved; and a short statement of the reason for the granting of the hearing.

(b) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a pre-hearing 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 pre-hearing conference by stipulation, agreed settlement, consent order or default.

(c) 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, shall keep order, and shall conduct 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 of 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. Notice may be taken of generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

3. It will be within the hearing officer's discretion to require official transcripts or to set up other procedures for taking evidence. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters of-

ficially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be opened to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.035.

(d) 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 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 seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary shall consider the report and recommended order and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer and the department's or issue his own written order based on the report and recommended order. The secretary shall act within twenty (20) days of the deadline for filing exceptions, unless extensions of time have been granted to the hearing officer, pursuant to paragraph (e).

(e) After completion of the hearing and filing of exceptions, the department shall notify the applicant in writing, certified mail, return receipt requested, of the final decision of the department. If any extension of time is granted by the secretary for a hearing officer to complete his report, the department shall notify all parties at the time of the granting of the extension. Parties shall have seven (7) days to file exceptions to the report and recommended order if such an extension is granted.

(f) 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.

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

(h) There shall be no ex parte communications between a hearing officer and parties to the action.

(i) Any person aggrieved by a final order of the department may have recourse to the courts as set forth in KRS 224.085 and 350.032(2).

Section 6. Deletion of Areas and Denial of Permit. (1) The department shall delete from a permit areas proposed to be affected by strip mining operations, or shall deny a permit when necessary to insure compliance with the provisions of this section.

(2) No application for a permit and no operation shall be approved or allowed by the department if there is found on the basis of the information set forth in the application, or based on other relevant information available to the department, that the requirements of KRS Chapter 350 and this chapter will not be observed, or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of KRS Chapter 350.

(3) If the department finds, based upon experience with similar operations upon lands with similar overburden, that substantial deposition of sediment in stream beds, landslides or acid water pollution cannot feasibly be

prevented, the department may delete such part of the land described in the application upon which such overburden exists.

(4) Subject to valid existing rights no strip mining operation except those which existed on or before August 4, 1977, shall be permitted to be within 300 feet from any occupied dwelling unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building or public park, or within 100 feet of a cemetery.

(5) The department shall not issue a permit if it finds that the operation will constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property. The department shall delete such areas from the permit application or operation.

(6) The department shall not give approval to strip mine any area which is within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line, provided however that the department may permit such public roads to be relocated, or may permit the area affected to lie within 100 feet of such public road, if after public notice and opportunity for public hearing in the locality a written finding is made by the department that the interest of the public and the land owner affected thereby will be protected.

(7) The department shall not issue a permit to strip mine an area unless it finds that adequate measures have been or will be undertaken to eliminate damage to members of the public, their real and personal property, public roads, streams, and all other public property, from soil erosion, rolling stones and overburden, water pollution, and hazards dangerous to life and property.

(8) No land within 100 feet of an intermittent or perennial stream shall be disturbed by strip mining and reclamation operations unless the department specifically authorizes operations through such a stream. The area not to be disturbed shall be designated a buffer zone and be marked as specified in 405 KAR 1:080 regarding signs and markers.

(9) Denial of permit for past violations:

(a) An operator or person whose mining permit or operation has been revoked, suspended, or terminated shall not be eligible to receive another permit or begin another operation, or be eligible to have suspended permits or operations reinstated, until he shall have complied with all the requirements of KRS Chapter 350 in respect to all permits issued him.

(b) No operator or person who has forfeited any bond shall be eligible to receive another permit or begin another operation unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator or person has paid such sum as the department finds is adequate to reclaim such lands.

(c) The department shall not issue any additional permits to, or allow future operations by, any operator or person who has repeatedly been in noncompliance with or violation of KRS Chapter 350, or who has had permits revoked or operations terminated on more than three (3) occasions.

Section 7. Increase or Decrease of Area under Permit. Upon application by the operator, the department may amend a valid existing permit so as to increase or decrease the permitted area of land to be affected by operations under that permit. Such applications for amendment may

be filed at any time during the term of the permit.

(1) Increase of area under permit:

(a) Application. The operator shall file an application in the same form and with the same content as required for an original application under Sections 2, 3, and 4 of this regulation.

(b) Fees. The operator shall pay in the manner prescribed in Section 4(17) of this regulation, a basic fee of \$250 plus a fee of fifty dollars (\$50) for each acre or fraction of acre of increased area requested on and after June 17, 1978, as provided in KRS 350.070.

(c) The operator shall file with the department a supplemental bond in the amount to be determined as provided in Section 4(18) of this regulation, for each acre or fraction of an acre of the increased area approved.

(d) The date of expiration of the amended permit shall be the same as the date of expiration of the permit prior to amendment.

(2) Decrease of area under permit:

(a) Application. The operator shall file an application upon forms provided by the department, with such documentation as the department may require, showing the undisturbed area which is requested to be subtracted from the area of land covered by the existing valid permit.

(b) Release of bond. If the department approves the decrease in permitted area it shall release the bond for each acre of the decrease, but in no case shall the bond be reduced below \$5,000 except as provided in Section 4(18)(c) of this regulation.

(c) Acreage fees transferred. If the department approves the decrease in acreage under permit the fees for each acre decreased shall be transferred and credited to acreage fees in subsequent application by the operator.

Section 8. Renewal of Valid Existing Permit. (1) Any valid permit issued pursuant to KRS Chapter 350 shall carry with it the right of successive renewal upon expiration, with respect to areas within the boundaries of the existing permit. Any permit renewal shall be for a term not to exceed the period of the original permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application which addresses any new land areas shall be subject to the full standards applicable to new applications pursuant to KRS Chapter 350, and a new and original application shall be required for such areas.

(3) Application for permit renewal shall be made not later than thirty (30) working days prior to the expiration of the existing valid permit. The holders of the permit may apply for renewal and such renewal shall be issued, and the public notice requirements of this chapter shall not apply, provided that the requirements of paragraphs (a) through (f) of this subsection are met.

(a) The application for renewal shall be submitted in the form, manner and content as prescribed by the department.

(b) The operator shall submit, in the manner prescribed by the department, all revised or updated information required by the department. Such information shall include, but not be limited to, an updated operational plan current to the date of request for renewal, showing the status and extent of all strip mining and reclamation operations on the existing permit.

(c) The terms and conditions of the existing permit are being satisfactorily met.

(d) The present strip mining and reclamation operation

is in compliance with the environmental protection standards of this chapter as set forth in 405 KAR 1:070 through 405 KAR 1:250.

(e) The renewal requested does not substantially jeopardize the operator's continuing responsibility on existing permit areas.

(f) The operator shall provide evidence that the performance bond is in effect for the renewal requested, as well as any additional bond which the department might require.

(4) Prior to approval of any permit renewal the department shall provide notice to the appropriate public authorities.

Section 9. Succession of One Operator by Another. (1) Where one operator succeeds another at any incompleting operation, either by sale, assignment, lease or otherwise, the department may release the first operator from all liability under this chapter for that particular operation provided the requirements of paragraphs (a) and (b) of this section are met.

(a) The successor operator shall have been issued a permit and shall have otherwise complied with the requirements of this chapter.

(b) The successor operator shall assume as part of his obligation under this chapter, all liability for the reclamation of land areas affected by the former operator.

(2) A successor in interest to a permittee who applies for a new permit within thirty (30) days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue strip mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

Section 10. Other Mining Operations on Strip Mine Areas. If approved by the department, an operator may conduct other mining operations from permits covered by a valid strip mining permit, subject to the provisions of KRS Chapters 351 and 352; provided such other operations are conducted in accordance with procedures and environmental protection performance standards as contained in KRS Chapter 350 and regulations adopted pursuant thereto regarding such other mining operations.

(1) Application for approval. In applying to the department for such approval the operator shall apply for such permit or authorization as may be required by KRS Chapter 350 or regulations adopted pursuant thereto for mining operations. The operator shall also furnish the department a revised copy of the map of the area on which the valid strip mining permit was based, on which he shall designate other mining operations, the location of outside haulageways, and other parts of the area necessary to the conduct of other mining operations.

(2) Deferral of reclamation. Subject to compliance with the water quality standards of 405 KAR 1:170, and subject to the requirements of KRS Chapter 350 and regulations adopted pursuant thereto regarding such other mining operations, the department may authorize the operator to defer the reclamation of the area covered by such other mining operations during such time as other bona fide mining operations are carried out.

(3) Bond to remain in effect. The bond covering such area shall remain in effect until reclamation of such area has been completed by the operator as required by the provisions of KRS Chapter 350 and regulations adopted pursuant thereto.

Section 11. Release of Bond. (1) When the backfilling and grading have been completed for an area in a manner consistent with the requirements of this chapter, and the soil pH level as required by the department has been established, the permittee may submit to the department a report and request for partial release of bond for the area. The report shall state the number of acres and type of area affected for which the partial bond release is requested and shall contain appropriate maps, cross-sections, and other engineering and technical documentation as the department may require to demonstrate to the satisfaction of the department that the requirements of this chapter have been met with regard to backfilling and grading and that the required soil pH level has been established.

(2) Upon verification of the report and request, the department shall release to the permittee the bond which was posted for that area in its full amount less \$300 per acre.

(3) After the preparation, planting and mulching of a given area and after not less than two (2) growing seasons, the permittee may submit a report for release of the remaining bond of \$300 per acre. The report shall demonstrate to the satisfaction of the department that the requirements of this chapter have been met with regard to revegetation, and that surface drainage from the area meets the water quality standards of this chapter prior to any treatment of the drainage.

(4) After verification of the request and report of vegetation and water quality, the department shall release to the permittee the remaining bond in the full amount of \$300 per acre.

(5) Transfer of liability. A person or organization, having qualifications acceptable to the department, may post bond or a cash deposit in a sum determined by the department and assume the liability for carrying out the reclamation plan approved by the department in areas where the mining operation and any necessary backfilling and grading have been completed. The department shall then release the bond posted by the permittee for such area.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:060E. Inspection and enforcement procedures.

RELATES TO: KRS 350.130
PURSUANT TO: KRS 13.082, 350.028
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth procedures for inspection and enforcement.

Section 1. Inspection Procedures. The department shall make such inspections or investigations as it deems necessary to insure compliance with any provision of KRS Chapter 350 and regulations adopted pursuant thereto.

Section 2. Enforcement Procedures. (1) Determination of violations. The department shall determine whether violations of the provisions of KRS Chapter 350 and regulations adopted pursuant thereto have occurred.

(2) Notice of violations. If the department determines that such violations have occurred, the department shall by certified mail (return receipt requested) provide written notice to the operator that such violations have occurred and shall therein stipulate a reasonable time period for the feasible correction of such violations.

(3) Notice of noncompliance, order of suspension:

(a) If any of the requirements of KRS Chapter 350 or rules and regulations adopted pursuant thereto have not been complied with within the time limits set by the department, or by KRS Chapter 350 or regulations adopted pursuant thereto, the department shall cause a notice of noncompliance to be served upon the operator; or where found necessary, the secretary shall, after a hearing (except as provided in KRS 244.071), order the suspension of a permit or operation.

(b) Such notice or order shall be handed to the person in charge of the operation. Such notice or order shall also be handed to the operator in person, or shall be served upon the operator by certified mail (return receipt requested), or by registered mail, addressed to the permanent address shown on the permit application. If no address is shown on the application, then such notice or order shall be mailed to such other address as known to the department.

(c) The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with KRS Chapter 350 or the regulations or orders of the department.

(4) Revocation of permit; termination of operation; forfeiture of bond. If the operator has not reached an agreement with the department or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked or the operation terminated, after a hearing, by order of the department and the performance bond, if any, shall then be forfeited to the department.

Section 3. Penalties. Any person or operator who violates any of the provisions of KRS Chapter 350 or regulations adopted pursuant thereto, or who fails to perform the duties imposed by such provisions, or who violates any determination or order promulgated pursuant to the provisions of KRS Chapter 350, shall be subject to civil and criminal penalties as set forth in KRS 350.990.

Section 4. Hearing. (1) an operator or permittee aggrieved by the actions of the department pursuant to this regulation may by written notice request that a hearing be conducted by the department. The right to demand such 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 such notice. The department shall schedule a hearing before the department not less than twenty-one (21) days after notice of demand for such a hearing. 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

regulations involved; and a short statement of the reason for the granting of the hearing.

(2) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a pre-hearing 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 pre-hearing conference by stipulation, agreed settlement, consent order or default.

(3) (a) 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, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice.

(b) 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 of 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. Notice may be taken of generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(c) It will be within the hearing officer's discretion to require official transcripts or to set up other procedures for taking evidence. 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 payment of the actual cost of reproducing the original except as provided in KRS 224.035.

(d) 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 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 seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary shall consider the report and recommended order

and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer and the department's or issue his own written order based on the report and recommended order. The secretary shall act within twenty (20) days of the deadline for filing exceptions, unless extensions of time have been granted to the hearing officer, pursuant to paragraph (e).

(e) After completion of the hearing and filing of exceptions, the department shall notify the applicant in writing, certified mail, return receipt requested, of the final decision of the department. If any extension of time is granted by the secretary for a hearing officer to complete his report, the department shall notify all parties at the time of the granting of the extension. Parties shall have seven (7) days to file exceptions to the report and recommended order if such an extension is granted.

(f) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one extension, and no more than two (2) such extensions shall be granted.

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

(h) There shall be no ex-parte communications between a hearing officer and parties to the action.

(i) Any person aggrieved by a final order of the department may have recourse to the courts as set forth in KRS 224.085 and 350.032(2).

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:070E. Postmining land use.

RELATES TO: KRS 350.405
PURSUANT TO: KRS 13.082, 350.028
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to the postmining use of land.

Section 1. General. All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or to higher or better uses achievable under criteria and procedures of this regulation.

Section 2. Determining Premining Land Use. (1) The premining land uses to which the postmining land use is compared shall be those uses which the land previously

supported if the land had not been previously mined and had been properly managed.

(2) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(3) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(4) If the premining use of the land was changed within five (5) years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

Section 3. Land use is categorized in the following groups: (1) Heavy industry. Manufacturing facilities, power plants, airports or similar facilities.

(2) Light industry and commercial services. Office buildings, stores, parking facilities, apartment houses, motels, hotels, or similar facilities.

(3) Public services. Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.

(4) Residential. Single- and multiple-family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than five (5) percent of the total land area of housing capacity, associated open space, and minor vehicle parking and recreation facilities supporting the housing.

(5) Cropland. Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included.

(6) Rangeland. Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.

(7) Hayland or pasture. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.

(8) Forest Land. Land with at least a twenty-five (25) percent tree canopy or land at least ten (10) percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.

(9) Impoundments of water. Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation, or water supply.

(10) Fish and wildlife habitat and recreation lands. Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife or recreation.

(11) Combined uses. Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

Section 4. Criteria for Approving Alternative Postmining Land Uses. Change from one to another land use category in premining to postmining constitutes an alternate land use and the applicant shall meet the requirements of this section and all other applicable provisions of this chapter. Mountaintop removal operations must also meet

the criteria of this section in addition to the requirements of 405 KAR 1:240 of this chapter with regard to mountain-top removal. An alternative postmining land use shall be approved by the department after consultation with the landowner or the land-management agency having jurisdiction over state or federal lands, if the criteria of this section are met.

(1) The proposed land use is compatible with adjacent land use and where applicable, with existing local, state or federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall accompany the request for approval. The applicant shall obtain any required approval of local, state or federal land management agencies, including any necessary zoning or other changes necessarily required for the final land use.

(2) Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, projected land use trends, and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The department may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the applicant, as appropriate, to provide them in a manner compatible with the applicant's plans.

(4) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the applicant as appropriate, if the postmining land use is to be developed by such parties.

(5) The plans are designed under the general supervision of a registered professional engineer or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the department and appropriate state and federal fish and wildlife management agencies.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, shall be reviewed by the department to assure that:

(a) There is a firm written commitment of the applicant or by the landowner or land manager to provide sufficient crop management after release of applicable performance bond to assure that the proposed postmining cropland use remains practical and reasonable;

(b) There is sufficient water available and committed to maintain crop production; and

(c) Topsoil quality and depth are shown to be sufficient to support the proposed use.

(10) The department has provided by public notice not less than forty-five (45) days nor more than sixty (60) days for interested citizens and local, state and federal agencies to review and comment on the proposed land use.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:080E. Signs and markers.

RELATES TO: KRS 350.200, 350.210

EFFECTIVE: May 3, 1978.

EXPIRES: August 31, 1978

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to the use of signs and markers at strip mining operations.

Section 1. General. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. Signs and other markers shall be maintained by the permittee during all operations to which they pertain and shall be kept legible and visible and shall conform to all local ordinances and codes. The department may establish standards for construction of signs and markers as necessary to accomplish the purposes of this regulation.

Section 2. Mine and Permit Identifications Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall clearly identify the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds. Failure to post such signs shall be grounds for revocation of the permit.

(2) Signs constructed pursuant to this section shall be constructed of wood or other durable material, with the sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 3. Perimeter Markers. The perimeter of the permit area shall be clearly marked by durable and easily recognized markers. Perimeter markers shall have permit numbers permanently affixed and shall be located so that adjacent markers are clearly visible.

Section 4. Buffer Zone Markers. Land areas within 100 feet of perennial and intermittent streams shall not be disturbed unless specifically authorized by the department.

Such areas to be undisturbed are to be designated as buffer zones and shall be marked along the interior boundary of the buffer zone in a manner consistent with perimeter markers.

Section 5. Blasting Signs. If blasting is necessary to conduct strip mining operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the permit area.

Section 6. Topsoil Markers. Areas where topsoil or other vegetation-supporting material is segregated and stockpiles shall be marked. Placement and quantity of markers shall be sufficient to clearly define such stockpiles. Markers shall remain in place until the material is removed.

Section 7. Monuments Marking Permit Areas. The permittee shall place a monument at the beginning and end of each original and additional permit area. Such monument shall consist of a metal pipe, at least three (3) inches in diameter, which shall be permanently fixed by the operator to protrude at least three (3) feet above the surface of the ground. The permit number shall be placed on the monument.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 1:090E. Use of explosives.

RELATES TO: KRS 350.430
PURSUANT TO: KRS 13.082, 350.028
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to the use of explosives.

Section 1. General. (1) The permittee shall comply with all applicable local, state and federal laws and regulations and the requirements of this regulation in the storage, handling, preparation, and use of explosives.

(2) Blasting operations that use more than the equivalent of five (5) pounds of TNT shall be conducted according to a time schedule approved by the department.

(3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand

the hazards involved. Persons working with explosive materials shall:

(a) Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;
(b) Be capable of using mature judgment in all situations;

(c) Be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs;

(d) Possess current knowledge of the local, state, and federal laws and regulations applicable to his work; and

(e) Have obtained a certificate of completion of training and qualification as required by KRS 351.315.

Section 2. Blasting Plan. A blasting plan shall be submitted with the permit application for approval by the department. The blasting plan shall contain the following in addition to any other blasting procedures which may be peculiar to the proposed operation or which may be required by a preblasting survey:

(1) The blasting schedule stipulating the hours during which blasting will be conducted;

(2) Types of audible warning and all-clear signals which will be used before and after blasting;

(3) Whether the permittee intends to use seismograph measurements for every blast or whether the formula in Section 7 will be followed;

(4) Location of where record of each blast will be retained and will be available for inspection by the department and the public;

(5) Name and address of newspapers in which the blasting schedule will be published;

(6) Names and addresses of local governments and public utilities to which blasting schedules will be mailed;

(7) A description of how emergency situations as defined in Section 6(2) will be handled when it may be necessary to blast at times other than those described in the schedule.

Section 3. Preblasting Survey. The department may require that a preblasting survey be made and may determine the area to be included in the survey.

(1) On the request to the department of a resident or owner of a manmade dwelling or structure that is located within one-half (½) mile of any part of the permit area, the permittee shall conduct a preblasting survey of the dwelling or structure and submit a report of the survey to the department.

(2) Personnel approved by the department shall conduct the survey to determine the condition of the dwelling or structure and to document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall include recommendations for any special considerations or proposed adjustments to the blasting procedures outlined in Sections 6 through 9 of this regulation which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the department.

Section 4. Public Notice of Blasting Schedule. At least

ten (10) days, but not more than twenty (20) days before beginning a blasting program in which explosives that use more than the equivalent of five (5) pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one-half (½) mile of the blasting sites described in the schedule. The permittee shall republish and redistribute the schedule by mail at least every three (3) months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedules shall contain at a minimum:

(1) Identification of the specific areas in which blasting will take place. The specific blasting areas described shall not be larger than 300 acres with a generally contiguous border;

(2) Dates and times when explosives are to be detonated expressed in increments of not more than four (4) hours;

(3) Methods to be used to control access to the blasting area;

(4) Types of audible warnings and all clear signals to be used before and after blasting; and

(5) A description of possible emergency situations as defined in Section 6(2) when it may be necessary to blast at times other than those described in the schedule.

Section 5. Public Notice of Changes to Blasting Schedules. Before blasting in areas not covered by a previous schedule or whenever the proposed frequency of individual detonations are materially changed, the permittee shall prepare a revised blasting schedule in accordance with the procedures in Section 4 of this regulation. If the change involves only a temporary adjustment of the frequency of blasts, the permittee may use alternate methods to notify the governmental bodies and individuals to whom the original schedule was sent.

Section 6. Blasting Procedures. (1) All blasting shall be conducted only during daytime hours, defined as sunrise to sunset. Based on public requests or other considerations, including the proximity to residential areas, the department may specify more restrictive time periods.

(2) Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions, or the safety of the operator or public requires unscheduled detonation.

(3) Warning and all-clear signals shall be given which are of different character and are audible within a range of one-half (½) mile from the point of the blast. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by 405 KAR 1:080 relating to signs and markers.

(4) Access to the blasting area shall be regulated to protect the public and livestock from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry beginning at least ten (10) minutes before each blast and lasting until the permittee's authorized representative had determined that no unusual circumstances such as imminent slides or undetonated charges exist and that access to and travel in or through the area can safely resume.

(5) Areas in which charged holes are awaiting firing shall

be guarded, barricaded and posted, or flagged against unauthorized entry.

(6) Airblast shall be controlled such that it does not exceed 128 decibel linear-peak at any manmade dwelling or structure located within one-half (½) mile of the permit area.

(7) Except where lesser distances are approved by the department, based upon a preblasting survey or other appropriate investigations, blasting shall not be conducted within:

(a) One thousand (1,000) feet of any building used as a dwelling, school, church, hospital, or nursing facility;

(b) Five hundred (500) feet of facilities including, but not limited to disposal wells, petroleum or gas-storage facilities, fluid-transmission pipelines, municipal water-storage facilities, gas or oil-collection lines, or water and sewage lines; or

(c) Five hundred (500) feet of an underground mine not totally abandoned, except with the concurrence of the Mine Safety and Health Administration of the United States Department of Labor.

Section 7. Blasting Standards. (1) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, or change in the course, channel, or availability of ground or surface waters outside the permit area.

(2) In all blasting operations, except as otherwise stated, the maximum peak particle velocity of the ground motion in any direction shall not exceed one (1) inch per second at the immediate location of any dwelling, public building, school, church, or commercial or institutional building. The department may reduce the maximum peak particle velocity allowed if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors.

(3) The maximum peak particle velocity of ground motion does not apply to property inside the permit area that is owned or leased by the permittee.

(4) The maximum weight of explosives to be detonated within any eight (8) millisecond period shall be determined by the formula $W = (D/60)^2$, where W = the maximum weight of explosives, in pounds, that can be detonated in any eight (8) millisecond period, and D = the distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building. If the blasting is conducted in accordance with this equation, the department will consider the vibrations to be within the one (1) inch per second limit.

(5) If on a particular site the peak particle velocity continuously exceeds one-half (½) inch per second after a period of one (1) second following the maximum ground particle velocity, the department shall require the blasting procedures to be revised to limit the ground motion.

Section 8. Seismograph Measurements. (1) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of one (1) inch per second is not exceeded, the equation in Section 7(4) need not be used. However, if the equation is not being used, a seismograph record shall be obtained for every shot. The seismograph record shall include:

(a) The seismograph reading, including the exact location of the seismograph and its distance from the blast;

(b) The name of the person taking the seismograph reading; and

(c) The name of the person and firm analyzing the seismograph record.

(2) The use of a modified equation to determine maximum weight of explosives for blasting operations at a particular site may be approved by the department on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. However, in no case shall the department approve the use of a modified equation where the peak particle velocity limit of one (1) inch per second required in Section 7(2) would be exceeded.

(3) The department may require a seismograph recording of any or all blasts.

Section 9. Record of Blasting Operations. A record of each blast, including seismograph records, shall be retained for at least three (3) years and shall be available for inspection by the department and the public on request. The record shall contain the following data:

(1) Name of permittee, operator, or other person conducting the blast;

(2) Location, date, and time of blast;

(3) Name, signature, and license number of blaster-in-charge;

(4) Direction and distance, in feet, to nearest dwelling, school, church, or commercial or institutional building neither owned nor leased by the permittee;

(5) Weather conditions;

(6) Type of material blasted;

(7) Number of holes, burden, and spacing;

(8) Diameter and depth of holes;

(9) Types of explosives used;

(10) Total weight of explosives used;

(11) Maximum weight of explosives detonated within any eight (8) millisecond period;

(12) Maximum number of holes detonated within any eight (8) millisecond period;

(13) Methods of firing and type of circuit;

(14) Type and length of stemming;

(15) If mats or other protections were used;

(16) Type of delay detonator used, and delay periods used; and

(17) Seismograph records, if required pursuant to Section 8 of this regulation.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:100E. Topsoil handling.

RELATES TO: KRS 350.415

PURSUANT TO: KRS 13.082, 350.028

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires

the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to the handling of topsoil.

Section 1. To prevent topsoil from being contaminated by spoil or waste materials, the topsoil shall be removed from the area to be disturbed as a separate operation. The topsoil shall be immediately redistributed on the areas graded to the approved postmining configuration unless storage of the topsoil by stockpiling or other means is approved by the department. If sufficient graded areas are not immediately available for topsoil redistribution, and the stockpiling of topsoil is approved by the department, the topsoil shall be segregated, stockpiled, and protected from wind and water erosion and from contaminants which would lessen its capability to support vegetation.

Section 2. Topsoil Removal. All topsoil to be salvaged shall be removed before any drilling for blasting, mining, or other surface disturbance.

(1) All topsoil shall be removed unless the use of alternative materials is approved by the department in accordance with Section 6 of this regulation. The size of the area from which topsoil may be removed at any one time shall be limited if the removal of the topsoil would result in erosion that may cause air or water pollution. The department may specify methods of treatment to control erosion of exposed overburden.

(2) All of the A horizon as identified by soil surveys shall be removed as provided in this section and then replaced on disturbed areas as the surface soil layers. Where the A horizon is less than six (6) inches, a six (6) inch layer that includes the A horizon and the unconsolidated material immediately below the A horizon (or all unconsolidated material if the total available is less than six (6) inches), shall be removed and the mixture segregated and replaced as the surface soil layer.

(3) The department may require that the B horizon or portions of the C horizon or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as subsoil where necessary to obtain productivity consistent with the approved postmining land use.

Section 3. Topsoil Redistribution. (1) After the final grading has been completed and before the topsoil is replaced, the regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration.

(2) The topsoil shall be redistributed on the regraded area in a manner which:

(a) Achieves an approximate uniform thickness consistent with postmining land uses;

(b) Prevents excessive compaction of the spoil and topsoil; and

(c) Protects the topsoil from wind and water erosion before it is seeded and planted.

Section 4. Topsoil Storage. Stockpiled topsoil shall be placed on stable areas within the permit area. The locations should be such that the stockpiled topsoil will not be disturbed or be exposed to excessive water, wind erosion, or contaminants which would lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. Stockpiled topsoil shall be protected either by a vegetative cover or by other methods demonstrated to provide equal protection, including but

not limited to chemical binders and mulching. Unless approved by the department, stockpiled topsoil shall not be moved until it is moved for redistribution on a disturbed area.

Section 5. Nutrients and soil amendments, in appropriate amounts and analyses as determined by soil tests, shall be applied to the surface soil layer so that it will support the postmining land use requirements and revegetation requirements of this chapter.

Section 6. Alternative Materials. When the existing topsoil is of insufficient quantity or poor quality for sustaining vegetation, the department may approve the use of selected overburden materials, alternative soil materials or soil amendments as alternatives or supplements to topsoil, where the resulting soil medium is equally or more suitable for vegetation, provided the requirements of this section are met.

(1) The applicant shall demonstrate by the results of chemical and physical analyses that the selected alternative material or alternative topsoil mixture is equally or more suitable than the original topsoil for restoring land capability and productivity. These analyses shall include determination of pH, percent organic material, nitrogen, phosphorus, potassium, texture class, water holding capacity, and such other analyses as the department may require. The department may also require the use of field-site trials or greenhouse tests to demonstrate the feasibility of using such alternative materials.

(2) Chemical and physical analyses and results of field-site trials and greenhouse tests shall be accompanied by a certification from a qualified soil scientist or agronomist.

(3) The alternative material shall be removed, segregated, and replaced in conformance with this section.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 1:110E. Revegetation.

RELATES TO: KRS 350.095, 350.435

PURSUANT TO: KRS 13.082, 350.028

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for the revegetation of lands affected by strip mining.

Section 1. General. (1) The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support the planned

postmining uses of the land approved according to 405 KAR 1:070. For areas designated as prime farmland, the reclamation procedures of 405 KAR 1:250 shall apply.

(2) Revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with approved land uses. The vegetative cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. If both the pre- and postmining land use is intensive agriculture, planting of the crops normally grown will meet the requirement. Vegetative cover will be considered of the same seasonal variety when it consists of mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.

(3) On federal lands, the surface management agency shall be consulted for approval prior to revegetation regarding what species are selected, and following revegetation, to determine when the area is ready to be used.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use, or are necessary to achieve a quick, temporary, and stabilizing cover. Such species substitution shall be approved by the department. Introduced species shall meet the applicable state and federal seed or introduced species statutes, and shall not include poisonous or potentially toxic species.

Section 3. Timing of Revegetation. (1) Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate.

(2) Any disturbed areas, except water areas and surface areas of roads that are approved under 405 KAR 1:070 as part of the postmining land use, which have been graded shall be seasonably seeded with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established.

(3) When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the postmining land use, form in regraded areas as specified in 405 KAR 1:130, additional regrading or other stabilization practices will be required before seeding and planting.

Section 4. Mulching. (1) Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth, and do not interfere with the post-mining use of the land.

(2) Mulch shall be anchored to the soil surface where appropriate, to ensure effective protection of the soil and vegetation.

(3) Application rates of mulch shall be consistent with those rates submitted on the revegetation plan except as

otherwise approved by the department.

(4) Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the department that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining use.

Section 5. Methods of Revegetation. (1) The permittee shall use technical publications or the results of laboratory and field test approved by the department to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The department shall approve species selection and planting plans.

(2) Where hayland or pasture is to be the postmining land use, the species of grasses, legumes, browse, trees, or forbs for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, distribution, and regenerative capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The department, in consultation with the permittee and the landowner or in concurrence with the governmental land-managing agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.

(3) Where forest is to be the postmining land use, the permittee shall plant trees adapted to local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, and regeneration capabilities native to the area.

(4) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate state and federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

Section 6. Standards for Measuring Success of Revegetation. (1) Success of revegetation shall be measured on the basis of reference areas approved by the department. Reference areas mean land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally. The reference areas must be representative of geology, soils, slope, aspect, and vegetation in the permit area. Management of the reference area shall be comparable to that which will be required for the approved postmining land use of the area to be mined. The department shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area.

(2) The ground cover of living plants on the revegetated area shall be equal to the ground cover of living plants of the approved reference area for a minimum of two (2) growing seasons. The ground cover shall not be considered equal if it is less than ninety (90) percent of the ground cover of the reference area for any significant portion of the mined area. Exceptions may be authorized by the department for:

(a) Previously mined areas that were not reclaimed to the standards required by this chapter prior to May 3, 1978. The ground cover of living plants for such areas shall

not be less than required to control erosion, and in no case less than that existing before redisturbance.

(b) Areas to be developed immediately for industrial or residential use. The ground cover of living plants shall not be less than required to control erosion. As used in this paragraph, "immediately" means less than two (2) years after regrading has been completed for the area to be used; and

(c) Areas to be used for agricultural cropland purposes. Success in revegetation of cropland shall be determined on the basis of crop production from the mined area compared to the reference area. Crop production from the mined area shall be equal to that of the approved reference area for a minimum of two (2) growing seasons. Production shall not be considered equal if it is less than ninety (90) percent of the production of the reference area for any significant portion of the mined area.

(3) Species diversity, distribution, seasonal variety, and vigor shall be evaluated on the basis of the results which could reasonably be expected using the methods of revegetation approved under Section 6 of this regulation.

Section 7. Seeding of Stockpiled Topsoil. Topsoil stockpiled in compliance with 405 KAR 1:100 must be seeded or planted with an effective cover of nonnoxious, quick growing annual and perennial plants during the first normal period for favorable planting conditions, or protected by other approved measures.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:120E. Access roads, haul roads, and other transport facilities.

RELATES TO: KRS Chapter 350
PURSUANT TO: KRS 13.082, 350.028
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for design, construction, maintenance and reclamation of access roads, haul roads and other transport facilities.

Section 1. General. (1) Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by state or federal law.

(2) The effluent limitations of 405 KAR 1:170 shall not

apply to drainage from access and haul roads located outside the disturbed area, as defined in 405 KAR 1:170, unless otherwise specified by the department.

Section 2. Construction. All access and haul roads shall be constructed in accordance with the requirements of this section.

(1) Roads shall not be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding.

(2) All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion.

(3) Roads shall not be located in active stream channels.

(4) Stream fords are prohibited unless they are specifically approved by the department as temporary routes across dry streams that will not adversely affect sedimentation and will not be used for coal haulage.

(5) Other stream crossings shall be made using bridges, culverts, or other structures designed and constructed to meet the requirements of this regulation.

(6) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the grade restrictions of this subsection or other grades determined by the department to be necessary to control erosion:

(a) The overall sustained grade shall not exceed 1v:10h ten (10) percent;

(b) The maximum grade greater than ten (10) percent shall not exceed 1v:5h (fifteen (15) percent) for more than 300 feet.

(c) There shall not be more than 300 feet of grade exceeding ten (10) percent within each 1,000 feet.

(7) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used.

(8) Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(9) All fill slopes and earth cut slopes shall be seeded in accordance with 405 KAR 1:110, Section 1(2).

Section 3. Drainage. (1) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, pipes, culverts, cross drains, and ditch relief drains.

(2) For access and haul roads that are to be maintained for more than one (1) year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event.

(3) Ditch-relief and cross drains shall be spaced according to grade.

(4) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(5) Drainage ditches shall be provided at the toe of all cut slopes formed by the construction of roads.

(6) Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures.

Section 4. Maintenance. (1) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping, or surfacing.

(2) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that im-

pedes drainage or adversely affects the intended purpose of the structure.

Section 5. Removal and Reclamation. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of 405 KAR 1:130 and 405 KAR 1:110, unless retention of a road is approved as part of a postmining land use under 405 KAR 1:070 as being necessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured.

Section 6. Other Transport Facilities. Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:130E. Backfilling and grading.

RELATES TO: KRS 350.093, 350.410, 350.450

PURSUANT TO: KRS 13.082, 350.028, 350.093, 350.450

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to the backfilling and grading of areas affected by strip mining operations.

Section 1. In order to achieve the approximate original contour, the permittee shall, except as provided in this regulation, transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. The postmining graded slopes must approximate the premining natural slopes in the area as defined in Section 2(2) of this regulation.

Section 2. Slope Measurements. (1) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the department in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturb-

ed; or, where this is impractical, at locations specified by the department. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the department to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from topographic maps showing contour lines having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(2) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the department. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

Section 3. Final Graded Slopes. (1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to Section 2(1) or any lesser slope specified by the department based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform.

(2) The requirements of this section may be modified by the department where the mining is re-affecting previously mined lands that have not been restored to the standards of this regulation and sufficient spoil is not available to return to the slope determined according to Section 2(1). Where such modifications are approved, the permittee shall, as a minimum, be required to:

(a) Retain all overburden and spoil on the solid portion of existing or new benches; and

(b) Backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed the angle of repose or such lesser slope as is necessary to assure stability.

(3) On approval by the department and in order to conserve soil moisture, ensure stability, and control erosion of final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the postmining land use approved under 405 KAR 1:070, and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed twenty (20) feet unless specifically approved by the department as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(b) The vertical distance between terraces shall be as specified by the department to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (fifty (50) percent). Out slopes which exceed 1v:2h (fifty (50) percent) may be approved if they have a minimum static safety factor of 1.5 or more and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on terraces only when approved by the department.

Section 4. Small Depressions. If approved by the department, small depressions may be constructed to minimize erosion, conserve soil moisture, or promote revegetation. These depressions shall be compatible with

the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than one (1) cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard.

Section 5. Permanent Impoundments. If approved by the department permanent impoundments may be retained on mined and reclaimed areas provided all highwalls are eliminated by grading to approximate original contour and the provisions of 405 KAR 1:070 for postmining land use, 405 KAR 1:160 for protection of the hydrologic system, and 405 KAR 1:220 with regard to permanent impoundments are met. No impoundments shall be constructed on top of areas in which excess materials are deposited pursuant to 405 KAR 1:140 with regard to the disposal of excess spoil material, or in which acid-forming, toxic-forming or waste materials are deposited pursuant to 405 KAR 1:150. Impoundments shall not be used to meet the requirements of Section 9 of this regulation with regard to covering of exposed coal seams, acid and toxic-forming materials, or waste materials.

Section 6. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas in accordance with 405 KAR 1:110 with regard to revegetation. The department shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Section 7. Thin and Thick Overburden Areas. (1) Applicability. The provisions of this section shall apply only when operations cannot be carried out to comply with the requirements of Sections 1, 2 and 3 of this regulation with regard to achieving approximate original contour.

(2) Definitions:

(a) "Initial thickness" is the sum of the overburden thickness and coal thickness.

(b) "Final thickness" is the product of the overburden thickness times the bulking factor to be determined for each mine area.

(c) "Thin overburden" exists when the final thickness is less than 0.8 of the initial thickness.

(d) "Thick overburden" exists when the final thickness is greater than 1.2 of the initial thickness.

(3) Thin overburden areas. In strip mining operations carried out continuously in the same limited pit area for more than one (1) year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials, as defined in Section 8, is demonstrated to be insufficient to achieve approximate original contour, operations shall be conducted to meet, at a minimum, the standards of this subsection.

(a) Transport, backfill, and grade, using all available spoil and suitable waste materials, as defined in Section 8 of this regulation, from the entire mine area to attain the lowest practicable stable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.

(b) Eliminate highways by grading or backfilling to stable slopes not exceeding 1v:2h (fifty (50) percent), or

such lesser slopes as specified by the department to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(c) Transport, backfill, grade and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.

(d) Transport, backfill, and grade to ensure the impoundments are constructed only where it has been demonstrated to the satisfaction of the department that all requirements of 405 KAR 1:160 have been met and that the impoundments have been approved by the department as meeting the requirements of this chapter and all other applicable federal and state laws and regulations.

(4) Thick overburden areas. In strip mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour, operations shall be conducted to meet, at a minimum, the standards of this subsection.

(a) Transport, backfill, and grade all spoil and suitable wastes not required to achieve approximate original contour in the strip mining area to the lowest practicable grade.

(b) Deposit, backfill, and grade excess spoil and suitable wastes only within the permit area and dispose of such materials in conformance with this chapter.

(c) Transport, backfill, and grade excess spoil and suitable wastes to maintain the hydrologic balance in accordance with this chapter and to provide long-term stability.

(d) Transport, backfill, grade, and revegetate suitable wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmined areas surrounding the permit area.

(e) Eliminate all highwalls and depressions except as stated in Section 5 of this regulation by backfilling with spoil and suitable waste materials.

Section 8. Use of Waste Materials as Fill. Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area are used for fill material, it must be demonstrated to the department by hydrogeological means and chemical and physical analyses that these waste materials are suitable for use as fill material and that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

Section 9. Covering and Stabilization. (1) All exposed coal seams remaining after mining and any acid-forming, toxic-forming, combustible materials, or any other waste materials identified by the department that are exposed, used, or produced during mining shall be covered with a minimum of four (4) feet of non-toxic and non-combustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to pose a threat of water pollution or otherwise violate the provisions of 405 KAR 1:160 with regard to protection of the hydrologic system.

(2) Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or subsurface waters and wherever necessary to ensure the stability of the backfilled materials. The method of compacting backfill material and the design specifications shall be ap-

proved by the department before the acid-forming or toxic-forming materials are covered.

Section 10. Grading along the contour. All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, in accordance with the provisions of 405 KAR 1:100 (topsoil handling), shall be done along the contour unless such grading would be hazardous to equipment operators. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

Section 11. Steep Slopes. All operations on steep slopes shall comply with the requirements of this regulation and with the requirements of 405 KAR 1:230 of this chapter with regard to steep slope mining. Slopes of twenty (20) degrees or more shall be considered as steep slopes, and the department may define such flatter slopes to be steep slopes as are necessary to achieve the purposes of this chapter.

Section 12. Mountaintop Removal. The requirements of this regulation with regard to backfilling and grading to achieve approximate original contour shall not apply to strip mining operations which remove entire coal seams in the upper part of a mountain, ridge or hill by removing all of the overburden, provided, however:

(1) That all requirements of 405 KAR 1:240 with regard to mountaintop removal shall be met; and

(2) The requirements of this regulation, in Section 4 with regard to small depressions, and Section 5 with regard to permanent impoundments, shall be met.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:140E. Disposal of excess spoil materials.

RELATES TO: KRS 350.440

PURSUANT TO: KRS 13.082, 350.028

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for the disposal of excess spoil monitoring.

Section 1. General. Excess spoil material which is not required in backfilling and grading to achieve the approximate original contour shall be transported to and placed in disposal areas other than the mine workings or excavations, provided that such transport and placement are conducted in a controlled (engineered) manner approved by

the department, and provided the requirements of this regulation are met.

Section 2. Disposal of Spoil in Valley Fills or Head-of-Hollow Fills. Excess spoil to be disposed of in valley fills or head-of-hollow fills shall be placed in accordance with the provisions of this section and any other applicable provisions of this chapter as follows:

(1) The disposal areas shall be within the permit area, and they must be approved by the department as suitable for construction of fills in accordance with the requirements of this regulation.

(2) The disposal site shall be near the ridge top of a valley selected to increase the stability of the fill and to reduce the drainage area above the fill. Where possible, spoil shall be placed above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer and approved by the department.

(4) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to 405 KAR 1:100 before the material is placed in the disposal area. However, if approved by the department, organic material may be used as mulch or may be included in the topsoil.

(5) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope designated by the department based on local conditions, measures such as keyway cuts (excavation to stable bedrock) or rock the buttresses shall be constructed to stabilize the fill.

(6) A system of underdrains constructed of durable rock shall be installed along the natural drainage system, shall extend from the toe to the head of the fill and contain lateral drains to each area of potential drainage or seepage. In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. No rock shall be used in underdrains if it tends to easily disintegrate and thereby clog the drain or if it is acid-forming or toxic-forming. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Drain size in feet	
		Width	Height
Less than 1 million cubic yards	Sandstone	10	4
	Shale	16	8
More than 1 million cubic yards	Sandstone	16	8
	Shale	16	8

(7) Spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the department in lifts that are less than four (4) feet thick in order to achieve the densities designed to ensure mass stability, to prevent mass movement, to avoid contamination of the rock underdrain and to prevent formation of voids. The final configuration of the fill must be suitable for postmining land uses approved in accordance with 405 KAR 1:070.

(8) Terraces shall be constructed to stabilize the face of

the fill at intervals not to exceed fifty (50) feet measured vertically between terraces. The width of the terrace shall not be less than twenty (20) feet.

(9) The tops of the fill and each terrace shall be graded no steeper than 1v:20h (five (5) percent) and shall be constructed to drain surface water to the sides of the fill where stabilized surface channels shall be established off the fill to carry drainage away from the fill. Drainage shall not be directed over the outslope of the fill unless approved by the department.

(10) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill by approved structures leading into watercourses.

(11) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The department may require a flatter slope.

(12) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods and at least quarterly throughout construction to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction of terraces according to the approved design. The registered engineer or other qualified professional specialist shall provide to the department a certified report after each inspection that the fill has been constructed as specified in the design approved by the department.

(13) Waste materials shall not be placed in valley fills or head-of-hollow fills which are used for disposal of excess spoil, except as specifically authorized by the department.

Section 3. Disposal of Spoil in Areas other than Valley Fills or Head-of-Hollow Fills. Excess spoil to be disposed of in areas other than valley fills or head-of-hollow fills shall be placed in accordance with the provisions of this section and any other applicable provisions of this chapter.

(1) The disposal areas shall be within the permit area, and they must be approved by the department as suitable for construction of fills in accordance with the requirements of this regulation.

(2) The disposal areas shall be located on the most moderate sloping and naturally stable areas available as approved by the department. Where possible, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(4) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope designated by the department based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

(5) The disposal area shall not contain springs, natural water courses, or wet weather seeps unless underdrains and lateral drains are designed and constructed in such a manner that infiltration of the water into the spoil pile will be prevented.

(6) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to 405 KAR 1:100 before the spoil material is placed in the disposal area. However, if approved by the department, organic material may be used as mulch or may be included in the topsoil.

(7) The spoil shall be transported and placed in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered and graded to allow surface and subsurface drainage to be

compatible with the natural surroundings, and to ensure long-term stability. The final configuration of the fill must be suitable for postmining land uses approved in accordance with 405 KAR 1:070. Terraces shall not be constructed unless approved by the department.

(8) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction or terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide to the department a certified report after each inspection that the fill has been constructed as specified in the design approved by the department.

(9) If any portion of the fill interrupts, obstructs, or encroaches upon any natural drainage channel, the entire fill is classified as a valley or head-of-hollow fill and must be designed and constructed in accordance with the requirements of Section 2 of this regulation.

LOWELL E. BRANDENBURG, Commissioner
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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:150E. Acid and toxic materials and waste material.

RELATES TO: KRS 350.410, 350.420
PURSUANT TO: KRS 13.082, 350.028
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for the handling of acid and toxic materials and waste material.

Section 1. General. Drainage from acid-forming and toxic-forming materials in soil, overburden, spoil, waste, and in other materials, shall be prevented from entering ground water and surface water. Methods of prevention may include but shall not be limited to:

(1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgement of the department, will be toxic to vegetation or that will adversely affect water quality if not treated or buried.

(2) Preventing or removing water from contact with acid- or toxic-producing deposits.

(3) Burying or otherwise treating all toxic or harmful materials within thirty (30) days, if such materials are subject to wind and water erosion, or within a lesser period designated by the department. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water.

(4) Acid-forming or toxic-forming material shall not be

buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of this chapter.

(5) All acid-forming or toxic-forming materials, combustible materials, coal preparation waste materials, or other waste materials identified by the department, that are exposed, used, or produced during mining shall be covered with a minimum of four (4) feet of nontoxic and noncombustible material. If necessary, such materials shall be treated to neutralize toxicity in order to prevent water pollution or sustained combustion and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts or exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the department shall specify greater depths of cover using nontoxic material.

(6) All methods of materials placement and compaction pursuant to this section shall be approved by the department.

(7) Waste materials used as fill shall meet the provisions of this regulation and the provisions of 405 KAR 1:130, Section 8.

Section 2. Coal waste. (1) Coal waste ponds and other coal waste materials shall be maintained according to the provisions of this regulation, and the provisions of 405 KAR 1:210 shall also apply.

(2) Waste materials from coal preparation plants shall be buried or otherwise treated within ninety (90) days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with the provisions of this regulation and the provisions of 405 KAR 1:130 with respect to backfilling and grading.

Section 3. The department may require other actions necessary to assure that the provisions of this regulation are met.

LOWELL E. BRANDENBURG, Commissioner
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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:160E. Protection of the hydrologic system.

RELATES TO: KRS 350.420
PURSUANT TO: KRS 13.082, 350.028, 350.420
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for minimizing disturbances to the hydrologic system.

Section 1. General. (1) Strip mining and reclamation operations shall be planned and conducted in such manner

as to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from strip mining and reclamation operations, both on and off site.

(2) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized such that the postmining land use of the disturbed land is not adversely affected and applicable federal and state statutes and regulations are not violated.

(3) Operations shall be conducted so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize practices which will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities. Such practices include, but are not limited to, stabilizing disturbed areas through grading, diverting runoff, achieving quick growth stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching, sealing acid-forming and toxic-forming materials and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment, necessary water treatment facilities shall be constructed, operated and maintained by the permittee for as long as treatment is required.

Section 2. Sealing of Surface Openings. (1) Vertical holes such as boreholes, shafts and walls, and approximately horizontal holes such as auger holes, shall be cased, sealed or otherwise managed to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality.

(2) All boreholes that are within the permit area but are outside the area of strip mining operations or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the department, unless the boreholes have been approved for use in monitoring.

(3) **Water Rights and Replacement.** The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption approximately resulting from strip mining operations by the permittee.

LOWELL E. BRANDENBURG, Commissioner
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**DEPARTMENT FOR NATURAL RESOURCES
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Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:180E. Ground water.

RELATES TO: KRS 350.420

PURSUANT TO: KRS 13.082, 350.028, 350.420

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for protection of the ground water system and ground water monitoring.

Section 1. Recharge Capacity of Reclaimed Lands. The disturbed area shall be reclaimed to restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the ground water system. The recharge capacity should be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance at the mined area and in associated off-site areas. The permittee shall be responsible for monitoring according to Section 3 of this regulation to ensure that operations conform to this requirement.

Section 2. Ground Water Systems. Backfilled materials shall be placed to minimize adverse effects on ground water flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to Section 3 of this regulation to ensure that operations conform to this requirement.

Section 3. Monitoring. Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the department to determine the effects of strip mining and reclamation operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells that can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The department may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the department, additional hydrologic tests, such as infiltration tests and aquifer tests, must be undertaken by the permittee to demonstrate compliance with Sections 1 and 2 of this regulation.

LOWELL E. BRANDENBURG, Commissioner
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DEPARTMENT FOR NATURAL RESOURCES
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Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:190E. Diversions of surface and underground flows.

RELATES TO: KRS 350.420

PURSUANT TO: KRS 13.082, 350.028, 350.420

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to diversions of surface and underground water flows.

Section 1. Diversions of Overland Flows. In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, if required or approved by the department, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met:

(1) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to streamflow or to runoff outside the permit area to the extent possible using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(2) Temporary diversion structures are those used during mining and reclamation, and when no longer needed these structures shall be removed and the areas reclaimed. Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one (1) year recurrence interval, or a larger event as specified by the department. The design criteria must assure adequate protection of the environment and public during existence of the temporary diversion structure.

(3) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the department and other appropriate state and federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year occurrence interval, or a larger event as specified by the department. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the department.

Section 2. Stream Channel Diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the department and they are in compliance with local, state, and federal statutes and regulations. When streamflow is allowed to be diverted, a new stream channel shall be designed and constructed to meet the requirements of this section.

(a) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of

suspended solids to stream-flow or to runoff outside the permit area to the extent possible using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the department for temporary diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.

(b) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a ten (10) year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the department.

(c) Fish and wildlife habitat and water and vegetation of significant value for wildlife shall be protected in consultation with appropriate state and federal fish and wildlife management agencies.

(2) All temporary diversion structures shall be removed, and the affected land regraded and revegetated consistent with the requirements of this chapter regarding backfilling, grading and revegetation. At the time such diversions are removed, the permittee shall insure that downstream water treatment facilities previously protected by the diversion are either modified or removed to prevent overtopping or failure of the facilities.

Section 3. Stream Buffer Zone. No land within 100 feet of an intermittent or perennial stream shall be disturbed by strip mining and reclamation operations unless the department specifically authorizes operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 1:080 regarding signs and markers.

Section 4. Discharge Structures. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

Section 5. Discharge of Waters into Underground Mines. Surface and ground waters shall not be discharged or diverted into underground mine workings.

LOWELL E. BRANDENBURG, Commissioner
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**DEPARTMENT FOR NATURAL RESOURCES
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Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:210E. Coal waste dams.

RELATES TO: KRS 350.425

PURSUANT TO: KRS 13.082, 350.028

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for the design, construction and reclamation of coal waste dams.

Section 1. General. No waste material shall be used in new dams without the approval of the department. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this regulation.

Section 2. Construction of Dams. (1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of 30 CFR 77.216(a) shall be approved by the department before construction and shall contain the minimum plan requirements established by the Mine Safety and Health Administration pursuant to 30 CFR 77.216-2.

(3) Construction requirements are as provided in this subsection:

(a) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the department.

(b) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least three (3) feet to avoid overtopping by wind and wave action.

(c) Dams shall have minimum safety factors as provided in the following table:

Case	Loading Condition	Minimum Safety Factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation	1.5
III	Steady seepage from spillway or decant crest	1.5
IV	Earthquake (cases II and III with seismic loading)	1.0

(d) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in this regulation and for all increments of construction.

(e) Seepage through the dam, foundation, and

abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(f) Allowances shall be made for settlement of dams and foundations so that the required freeboard will be maintained.

(g) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated within ten (10) days by spillways or decants of ninety (90) percent of the volume of water stored during the design precipitation event.

(h) During construction of dams subject to this regulation the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(i) A permanent identification marker, at least six (6) feet high that shows the dam number assigned pursuant to 30 CFR 77.216-1 and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within thirty (30) days of certification of design pursuant to this regulation.

(4) All dams, including those not meeting the size or other criteria of 30 CFR 77.216-1, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mine Safety and Health Administration regulations pursuant to 30 CFR 77.216-3.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this regulation shall be certified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual certification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the department before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the department approves retention of such dams as being compatible with an approved postmining land use.

(9) Coal waste dams constructed pursuant to this regulation shall be approved by the department, designed, con-

structed and maintained according to the provisions of KRS 151.250 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:220E. Permanent impoundments.

RELATES TO: KRS 350.455
PURSUANT TO: KRS 13.082, 350.028
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for permanent water impoundments.

Section 1. General Requirements. The permittee may construct, if authorized by the department, permanent water impoundments on mining sites only when they are adequately demonstrated to be in compliance with the requirements of this chapter in addition to the following requirements:

(1) The size of the impoundment is adequate for its intended purposes.

(2) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006).

(3) The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable federal and state law.

(4) The level of water will be reasonably stable.

(5) Final grading will comply with the provisions of the backfilling and grading requirements of 405 KAR 1:130 and will provide adequate safety and access for proposed water users.

(6) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

Section 2. Permanent impoundments shall be approved by the department, designed, constructed and maintained in accordance with the provisions of KRS 151.250 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner
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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:230E. Steep slope mining.

RELATES TO: KRS 350.445
PURSUANT TO: KRS 13.082, 350.028
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth additional requirements for strip mining on areas of steep slope.

Section 1. Permittees conducting strip mining operations on natural slopes that exceed twenty (20) degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the department after consideration of soils, climate, the method of operation, geology, and other regional characteristics, shall comply with all other applicable requirements of this chapter and in addition shall comply with the following requirements:

(1) Spoil, waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope.

(2) The highwall shall be completely covered with spoil and the disturbed area graded to comply with the provisions of 405 KAR 1:130 with regard to backfilling and grading. Land above the highwall shall not be disturbed unless the department finds that the disturbance will facilitate compliance with the requirements of this regulation.

(3) Material in excess of that required to meet the provisions of 405 KAR 1:130 shall be disposed of in accordance with the requirements of 405 KAR 1:140.

(4) Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill. Woody materials may be chipped and distributed through the backfill when approved by the department.

Section 2. The requirements of Section 1 do not apply where strip mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or where mining is governed by 405 KAR 1:240 as related to mountaintop removal.

Section 3. Small operators as defined and qualified pursuant to 405 KAR 1:030, who are otherwise exempted from certain requirements of this chapter, are not exempted from Section 1(1) of this regulation regarding the placement of materials on downslopes.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:240E. Mountaintop removal.

RELATES TO: KRS 350.450

PURSUANT TO: KRS 13.082, 350.028, 350.450

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth special requirements for strip mining by the method of mountaintop removal.

Section 1. Strip mining operations that remove entire coal seams running through the upper part of a mountain, ridge, or hill by removing all the overburden and creating a level plateau of gently rolling contour with no highwalls remaining are exempt from the requirements of 405 KAR 1:130 for achieving approximate original contour, if the following requirements are met:

(1) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the affected land.

(2) The alternative postmining land use criteria in 405 KAR 1:070 are met and the proposal is approved by the department.

(3) The requirements of all other applicable regulations of this chapter are met in addition to the special requirements of this regulation.

Section 2. Strip mining operations conducted pursuant to this regulation shall comply with the standards of this section.

(1) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam and its associated overburden, shall be retained to prevent slides and erosion.

(2) The final graded top plateau slopes on the mined area shall be less than 1v:5h (twenty (20) percent) so as to create a level plateau or gently rolling configuration and the outslope of the plateau shall not exceed 1v:2h (fifty (50) percent), except where engineering data substantiates and the department finds that a minimum static safety factor of 1.5 will be attained. The department may require higher static safety factors depending upon specific site conditions.

(3) The resulting level or gently rolling contour shall be graded to drain inward from the outslope except at specific points where it drains over the out slopes in protected stable channels.

(4) All highwalls, spoil piles, and depressions shall be eliminated except as provided in Sections 4 and 5 of 405 KAR 1:130 with regard to backfilling and grading.

(5) Damage to natural water courses below the area to be mined shall be prevented.

(6) Spoil shall be placed on the mountaintop bench as is necessary to achieve the postmining land use approved under 405 KAR 1:070. All excess spoil material not retained on the mountaintop shall be placed in accordance with the standards of 405 KAR 1:140.

Section 3. (1) All permits giving approval for mountaintop removal shall be reviewed not more than three (3) years from the date of issuance of the permit, unless the permittee affirmatively demonstrates and the department finds

that all operations are proceeding in accordance with the terms of the permit, KRS Chapter 350 and the applicable regulations of this chapter.

(2) The terms of a permit for mountaintop removal may be modified by the department if it determines that more stringent measures are necessary to prevent or control slides and erosion, prevent damage to natural water courses, avoid water pollution, or to assure successful revegetation.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:250E. Prime farmland.

RELATES TO: KRS 350.450

PURSUANT TO: KRS 13.082, 350.028, 350.450

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth special requirements for the strip mining of lands containing prime farmland.

Section 1. Applicability. (1) Permittees of strip mining operations conducted on prime farmland shall comply with all applicable requirements of this chapter in addition to the special requirements of this regulation. Prime farmlands are those lands defined in Section 2 of this regulation that have been used for the production of cultivated crops, including nurseries, orchards, and other specialty crops, and small grains for at least five (5) years out of the twenty (20) years preceding the date of the permit application.

(2) The requirements of this regulation are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this regulation. Permit renewals or revisions shall include only those areas that:

(a) Were in the original permit area approved prior to August 3, 1977; or

(b) Are contiguous and under KRS Chapter 350 and applicable regulations would have normally been considered as a revision of a previously approved permit.

Section 2. Definition. Prime farmland means those lands that meet the applicability requirements in Section 1 of this regulation and the specific technical criteria prescribed by the Secretary of the United States Department of Agriculture as published in the Federal Register on August 23, 1977. These criteria are included here for convenience. Terms used in this section are defined in U.S. Department of Agriculture publications: Soil Taxonomy,

Agriculture Handbook 436; Soil Survey Manual, Agriculture Handbook 18; Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282; and Saline and Alkali Soils, Agriculture Handbook 60. To be considered prime farmland, soils must meet all of the criteria of this section.

(1) The soils have:

(a) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of forty (40) inches or in the root zone, if the root zone is less than forty (40) inches deep, to produce the commonly grown crops in seven (7) or more years out of ten (10); or

(b) Xeric or ustic moisture regimes in which the available water capacity is limited but the area has a developed irrigation water supply that is dependable and of adequate quality (a dependable water supply is one in which enough water is available for irrigation in eight (8) out of ten (10) years for the crops commonly grown); or

(c) Aridic or torric moisture regimes and the area has a developed irrigation-water supply that is dependable and of adequate quality.

(2) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that at a depth of twenty (20) inches have a mean annual temperature higher than thirty-two (32) degrees Fahrenheit. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than forty-seven (47) degrees Fahrenheit; in soils that have no O horizon the mean summer temperature is higher than fifty-nine (59) degrees Fahrenheit.

(3) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of forty (40) inches or in the root zone if the root zone is less than forty (40) inches.

(4) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.

(5) The soils can be managed so that, in all horizons within a depth of forty (40) inches or in the root zone if the root zone is less than forty (40) inches deep, during part of each year the conductivity of saturation extract is less than (4) mmhos/cm and the exchangeable sodium percentage (ESP) is less than fifteen (15).

(6) The soils are not flooded frequently during the growing season (less often than once in two (2) years).

(7) The soils have a product of K (erodibility factor) X percent slope of less than 2.0 and a product of I (soil erodibility) X C (climate factor) not exceeding sixty (60).

(8) The soils have a permeability rate of at least 0.06 inch per hour in the upper twenty (20) inches and the mean annual soil temperature at a depth of twenty (20) inches is less than fifty-nine (59) degrees Fahrenheit; the permeability rate is not a limiting factor if the mean annual soil temperature is fifty-nine (59) degrees Fahrenheit or higher.

(9) Less than ten (10) percent of the surface layer (upper six (6) inches) in these soils consists of rock fragments coarser than three (3) inches.

Section 3. Identification of Prime Farmland. Prime farmland shall be identified on the basis of soil surveys submitted by the applicant. The department also may require data on irrigation, drainage, flood control, and subsurface water management. The requirement for submission of soil surveys may be waived by the department if the applicant can demonstrate according to the procedures in Section 4 of these regulations that no prime farmlands are involved. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey, which

include the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual), and shall include:

(1) Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with Section 2 of this regulation.

(2) A map designating the exact location and extent of the prime farmland;

(3) A description of each soil mapping unit.

Section 4. Negative Determination of Prime Farmland. The land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations:

(1) Lands within the proposed permit boundaries have been used for the production of cultivated crops for less than five (5) years out of twenty (20) years preceding the date of the permit application.

(2) The slope of all land within the permit area is ten (10) percent or greater.

(3) Land within the permit area is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is fourteen (14) inches or less.

(4) Other factors exist, such as a very rocky surface, or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland.

(5) A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in Section 1 of this regulation is submitted to the department by a qualified person other than the applicant, and is approved by the department.

Section 5. Plan for Restoration of Prime Farmland. The applicant shall submit to the department a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the department in judging the technological capability of the applicant to restore prime farmlands. The plan shall include:

(1) A description of the original undisturbed soil profile, as determined from a soil survey, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops and are to be removed, stored, and replaced;

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with Section 7 of this regulation;

(3) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;

(4) If applicable, documentation such as agricultural school studies or other scientific data from comparable areas that supports the use of other suitable material, instead of the A, B, or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management; and

(5) Plans for seeding or cropping the final graded mine land and the conservation practices to control erosion and sedimentation during the first twelve (12) months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and

(6) Available agricultural school studies, company data, or other scientific data for comparable areas that demonstrate that the applicant using his proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

Section 6. Consultation with Secretary of Agriculture and Issuance of Permit. (1) The department may grant a permit which shall incorporate the plan submitted under Section 5 of this regulation if the department finds in writing that the applicant:

(a) Has the technological capability to restore the prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(b) Will achieve compliance with the standards of Section 7 of this regulation.

(2) Before any permit is issued for areas that include prime farmlands, the department shall consult with the Secretary of Agriculture. The Secretary of Agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has assigned his responsibilities under this paragraph to the Administrator of the U.S. Soil Conservation Service and the U.S. Soil Conservation Service will carry out the consultation and review through their State Conservationist, located in each state.

Section 7. Special Requirements. For prime farmlands to be mined and reclaimed, the applicant shall meet the special requirements of this section.

(1) All soil horizons to be used in the reconstruction of the soil shall be removed before drilling, blasting, or mining to prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons result in erosion that may cause air or water pollution, the department shall specify methods of treatment to control erosion of exposed overburden. The permittee shall:

(a) Remove separately the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material before replacement;

(b) Remove separately the B horizon of the natural soil or a combination of B horizon and underlying C horizon or other suitable soil material that will create a reconstructed root zone of equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material; and

(c) Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or more favorable for plant growth than the B horizon, and that when replaced will create in the reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil.

(2) If stockpiling of soil horizons is allowed by the department in lieu of immediate replacement, the A horizon and B horizon must be stored separately from each other. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water or wind before the stockpiled

horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than thirty (30) days must meet the requirements of Section 4 of 405 KAR 1:100 with regard to storage of topsoil.

(3) Scarify the final graded land before the soil horizons are replaced.

(4) Replace the material from the B horizon, or other suitable material specified in subsection (1)(b) or subsection (1)(c) of this section in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.

(5) Replace the A horizon or other suitable soil materials, which will create a final soil having an equal or greater productive capacity than existed prior to mining, as the final surface soil layer to the thickness of the original soil as determined in subsection (1)(a) of this section in a manner that:

(a) Prevents excess compaction of both the surface layer and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper twenty (20) inches of the reconstructed soil profile; and

(b) Protects the surface layer from wind and water erosion before it is seeded or planted.

(6) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 10 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:010E. Definitions.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation defines essential terms used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in this chapter or otherwise clearly indicated by their context, terms in this chapter shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by strip mining operations or by surface operations of underground coal mining.

(2) "Acid-producing" or "acid-forming materials" means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

(3) "Approximate original contour" means that surface

configuration achieved by backfilling and grading of the area of land affected so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the department determines that they are in compliance with 405 KAR 3:190.

(4) "Area of land affected" means the area of land which has been or will be disturbed by excavation or upon which activities have been or will be conducted or facilities, equipment or materials have been or will be located in connection with surface operations of underground coal mining or upon which surface effects of underground coal mining have occurred or will occur.

(5) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

(6) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes laterally into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(7) "Bench" means a ledge, shelf or terrace formed in the contour method of strip mining or formed in surface operations of underground coal mining.

(8) "Bureau" means the Bureau of Surface Mining Reclamation and Enforcement, Department for Natural Resources and Environmental Protection.

(9) "Coal" means combustible, carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by American Society for Testing and Materials (ASTM) designation 0-388-66.

(10) "Combustible material" means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

(11) "Commissioner" means the Commissioner of the Bureau of Surface Mining Reclamation and Enforcement of the Department for Natural Resources and Environmental Protection.

(12) "Compaction" means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

(13) "Department" means the Department for Natural Resources and Environmental Protection.

(14) "Disturbed area" means those lands that have been affected by strip mining and reclamation operations, or by surface operations of underground coal mining.

(15) "Diversion" means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.

(16) "Downslope" means the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall.

(17) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(18) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(19) "Fill bench" means that portion of the bench which is formed by depositing overburden beyond the cut section.

(20) "Final grade" means the finished elevation of any surface disturbance prior to replacement of topsoil.

(21) "Ground water" means subsurface water that fills available openings in rock or soil materials such that they

may be considered water-saturated.

(22) "Gully erosion" means the erosion process whereby water accumulates in narrow channels over short periods and removes the soil from this narrow area to depths greater than one (1) foot.

(23) "Highwall" means the face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.

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

(25) "Hydrologic regime" or "hydrologic system" means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomenon by which water occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(26) "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of P.L. 95-87 in the surface operations of underground coal mining and reclamation operations, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

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

(28) "Intermittent or perennial stream" means a watercourse or part of a watercourse that flows continuously during all (perennial) or for at least one (1) month (intermittent) of the calendar year as a result of ground water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one (1) month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

(29) "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

(30) "Method of operation" means all aspects of the manner in which surface operations of underground coal mining are carried out.

(31) "Noxious plants" means species that have been included on official state lists of noxious plants for the State of Kentucky.

(32) "Operations" means all of the activities, premises, facilities, areas and equipment used to facilitate the process of producing coal from an underground coal mine, to facilitate the removing of overburden for the purpose of determining the location, quality or quantity of a natural coal deposit, or to facilitate the cleaning, preparation or other processing of coal.

(33) "Operator" means any person engaged in surface operations of underground coal mining who removes or intends to remove more than 250 tons of coal from the earth

by underground mining within twelve (12) successive calendar months or who removes overburden for the purpose of determining the location, quality or quantity of a natural coal deposit.

(34) "Outslope" means the exposed area sloping away from a bench or terrace being constructed as a part of strip mining, surface operations of underground coal mining, and/or reclamation operations.

(35) "Overburden" means all of the earth and other materials which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of strip mining.

(36) "Permit" means the written document issued by the department to the permittee pursuant to this chapter.

(37) "Permittee" means any person holding a valid permit to conduct surface operations of underground coal mining and reclamation operations issued by the department pursuant to this chapter.

(38) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization.

(39) "Productivity" means the vegetative yield produced by a unit area for a unit of time.

(40) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(41) "Reclamation" means the reconditioning of the area affected by strip mining or surface operations of underground coal mining.

(42) "Recurrence interval" means the precipitation event expected to occur, on the average, once in a specified interval. For example, the ten (10) year, twenty-four (24) hour precipitation event would be that twenty-four (24) hour precipitation event expected to be exceeded on the average once in ten (10) years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U. S.," May, 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

(43) "Rill erosion" means an erosion process in which numerous small channels only several inches deep are formed.

(44) "Roads" mean access and haul roads constructed, used, reconstructed, improved, or maintained for use in strip mining and reclamation operations or surface operations of underground coal mining, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within forty-five (45) days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all federal, state, county, or local roads are excluded from the definition.

(45) "Runoff" means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

(46) "Safety factor" means the ratio of the available shear strength to developed shear stress on a potential surface of sliding determined by accepted engineering practice.

(47) "Secretary" means the Secretary of the Department for Natural Resources and Environmental Protection.

(48) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(49) "Sedimentation ponds" means any natural or ar-

tificial structure or depression used to remove sediment from water and store sediment or other debris.

(50) "Sheet erosion" means an erosion process whereby a uniform layer of soil is removed from the land surface by runoff water.

(51) "Significant, imminent environmental harm to land, air or water resources" is determined as follows:

(a) An environmental harm is an adverse impact on land, air or water resources, including but not limited to plant and animal life.

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

1. Is causing such harm; or
2. May be reasonably expected to cause such harm at any time before the end of the reasonable abatement time that would be set under section 521(a)(3) of P.L. 95-87.

(c) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(52) "Slope" means average inclination of a surface, measured from the horizontal, normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v to 5h = 20 percent = 11.3 degrees).

(53) "Soil horizons" means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:

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

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

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

(54) "Spoil" means overburden that has been removed during strip mining.

(55) "Stabilize" means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

(56) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a land owner for his own noncommercial use from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under regulations established by the department nor shall it include the surface effects or surface impacts of underground coal mining.

(57) "Subirrigation" means irrigation of plants with water delivered to the roots from underneath.

(58) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

(59) "Surface coal mining operations" means:

(a) Activities conducted on the surface of lands in connection with a strip mine or in connection with surface operations and surface effects of an underground coal mine. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16⅔) percent of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration subject to Section 512 of P.L. 95-87; and

(b) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage and excavation, working, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(60) "Surface effects of underground coal mining" means "surface operations of underground coal mining" and the topographical, geological, hydrological, physical, chemical, and biological impacts upon the land, water and air and upon plants, animals and other organisms.

(61) "Surface operations of underground coal mining" means activities and associated facilities, equipment, materials and premises on or above the surface of the earth used in connection with or incident to an underground coal mine, and shall include but not be limited to:

(a) Areas of land upon which such activities, facilities, equipment or materials are located or disturb the natural land surfaces;

(b) Adjacent areas of land where use of such adjacent areas is incidental to such activities, facilities, equipment, or materials;

(c) Areas of land disturbed or affected by the construction of new roads or the improvement or use of existing roads for haulage or excavation or for access to the site of such activities, facilities, equipment, or materials;

(d) Activities, facilities, equipment, materials, and premises for or incidental to the washing, cleaning, concentrating, crushing, preparation, or other processing of coal not involving a change in the chemical composition thereof;

(e) Excavation, haulage, workings, entryways, ventilation shafts, repair areas, storage areas, loading areas, and shipping areas;

(f) Disposal areas for coal waste and preparation plant waste, including solid refuse piles, slurry ponds, dams and impoundments which contain coal waste materials, dumps, culm banks, and tailings;

(g) Disposal areas for rock and earth materials, including spoil piles, overburden piles, and valley and head-of-hollow fills;

(h) Holes, depressions, sedimentation ponds or other impoundments; and

(i) Other areas upon which are situated facilities, equipment, materials, or other property incidental to or resulting from such activities, facilities, equipment or materials.

(62) "Surface water" means water, either flowing or standing, on the surface of the earth.

(63) "Suspended solids" means organic or inorganic materials carried or held in suspension in water and that will remain on a 0.45 micron filter.

(64) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or micro-biological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(65) "Toxic-mine drainage" means water that is discharged from active or abandoned mines and other areas affected by mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(66) "Valley fill and head-of-hollow fill" means a structure consisting of any material other than waste placed so as to encroach upon or obstruct to any extent any natural watercourse other than those minor watercourses located on highland areas where overland flow in natural rills and gullies is the predominant form of runoff. Such fills are normally constructed in the uppermost portion of a V-shaped valley in order to reduce the upstream drainage area (head-of-hollow fills). Fills located farther downstream (valley fills) must have larger diversion structures to minimize infiltration. Both fills are characterized by rock underdrains and are constructed in compacted lifts from the toe to the upper surface in a manner to promote stability.

(67) "Waste" means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, washed or otherwise separated from product coal and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

(68) "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 3:020E. General provisions.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth general provisions which apply in this chapter with regard to applicability, compatibility, conflicting provisions, severability, obligations of operators, and reporting requirements.

Section 1. Applicability. The regulations in this chapter shall apply to all surface operations for the underground mining of coal and all surface effects of underground coal mining conducted on or after May 3, 1978, and to any other lands used, disturbed, or redisturbed in connection with or to facilitate the underground mining of coal except:

(1) The extraction of coal by a land owner for his own noncommercial use from land owned or leased by him;

(2) The extraction of coal as in incidental part of highway or other construction financed by federal, state or local governments;

(3) The extraction of coal in any operation or activity in which are extracted 250 tons or less of coal within a period of twelve (12) consecutive calendar months; and

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16⅔) percent of the total mineral tonnage extracted for commercial use or sales.

Section 2. Compatibility with P.L. 95-87. The provisions of this chapter are to be construed as compatible with federal regulations adopted pursuant to P.L. 95-87, the "Surface Mining Control and Reclamation Act of 1977;" and the department may amend the regulations of this chapter to achieve conformity and compatibility with such federal regulations.

Section 3. Conflicting Provisions. The provisions of this chapter are to be construed as being compatible with and complimentary to each other. In the event that provisions within this chapter are found to be contradictory, the more stringent provisions shall apply.

Section 4. Severability. In the event that any provision or regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 5. Obligations of Operators. General obligations:

(1) No person or operator shall engage in surface operations of underground coal mining without having obtained from the department a valid permit covering the area of land to be affected, except that underground mining operations existing on or before May 3, 1978, shall by August 3, 1978, make application to the department for a permit pursuant to the provisions of 405 KAR 3:050.

(2) A person or operator engaged in surface operations

of underground coal mining shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to KRS 350.151, nor place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to KRS 350.151.

(3) A person or operator engaged in surface operations of underground coal mining shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(4) A person or operator engaged in surface operations of underground coal mining shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(5) On or after May 3, 1978, any person or operator engaged in surface operations of underground coal mining shall comply with the requirements of this chapter, except when compliance with the requirements of this chapter would preclude compliance with the requirements of Public Law 95-87, August 3, 1977, the "Surface Mining Control and Reclamation Act of 1977," and regulations adopted pursuant thereto.

(6) Upon development of any emergency conditions which threaten the life, health or property of the public, the operator shall immediately notify the persons whose life, health or property are so threatened, shall take any and all reasonable actions to eliminate the conditions creating the emergency, and shall provide notice of the emergency conditions to the department and to local law enforcement officials and appropriate local government officials. Any emergency action taken by an operator pursuant to this paragraph shall not relieve the operator of other obligations under this chapter or of obligations under other applicable local, state or federal laws and regulations.

(7) Compliance with the requirements of this chapter does not relieve any person or operator of responsibility for compliance with other applicable regulations of the department.

Section 6. Reporting Requirements. (1) Annual report of mining and reclamation. Any operator or person holding a valid permit for surface operations of underground coal mining pursuant to KRS 350.151 and this chapter shall submit, in a form and manner prescribed by the department, a report of all surface operations and reclamation operations conducted pursuant to the permit in the preceding twelve (12) month period. Such report shall be submitted not later than thirty (30) days after the end of each anniversary date of the permit. However, when the operator requests renewal of the permit pursuant to Section 8 of 405 KAR 3:050, and such information as is required in this subsection has been provided in the request for renewal, the requirement for such report for the preceding twelve (12) month period shall be deemed satisfied. Such report shall contain, but shall not be limited to the following information:

(a) The identification of the operation;

(b) Such maps as may be required by the department;

- (c) The area of land disturbed, backfilled and regraded;
- (d) The area of land planted or seeded;
- (e) The type of planting or seeding, including mixtures and rates of application of plants, seed, lime, fertilizers, insecticides and other agents;
- (f) The dates of planting or seeding;
- (g) The condition of all sediment ponds, impoundments, disposal areas for excess rock and earth materials, and disposal areas for waste materials;
- (h) Such additional information as the department may require;
- (i) Such reports shall be certified by the operator as to accuracy.

(2) Mine map. Any operator or person conducting surface operations of underground coal mining and reclamation operations on and after May 3, 1978, shall submit to the department before July 3, 1978, an accurate map of the mine and permit area at a scale between 1:6000 and 1:200. The map shall show as of May 3, 1978, the lands, facilities and structures which have been used or disturbed to facilitate surface operations of underground coal mining.

(3) Other reports required. The operator shall submit such other reports, documentation, certifications, or other information as the department may require, or as may be required by KRS Chapter 350 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner
 ADOPTED: May 3, 1978
 APPROVED: EUGENE F. MOONEY, Secretary
 RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
 AND ENVIRONMENTAL PROTECTION**
 Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:030E. Small operator exemption.

RELATES TO: KRS 350.151
 PURSUANT TO: KRS 13.082, 350.151
 EFFECTIVE: May 3, 1978
 EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth conditions for the exemption of qualified small operators from certain provisions of this chapter.

Section 1. Applicability. If a person or operator is eligible under Section 2 of this regulation, and intends to engage in surface operations of underground coal mining on or after May 3, 1978, the department may certify the person or operator as qualified to receive a limited exemption from the provisions of this chapter. The exemption:

(1) Shall not relieve the person or operator of his obligations under the terms of any permits issued by the department under which he is operating or other obligations imposed upon him by applicable laws and regulations;

(2) Shall not relieve the person or operator of the obligation to apply for a permit by August 3, 1978 as required by 405 KAR 3:020, Section 5(1)(a);

(3) Shall not relieve the person or operator of his obligations imposed by 405 KAR 3:020, Section 5(1)(b), (c), (d), and (f), regarding operations which endanger the health and safety of the public or the environment;

(4) Shall not include the provisions of 405 KAR 3:100, Section 7, regarding the placement of spoil or other material on downslopes in steep slope areas; and

(5) Shall exempt the permittee from the requirement of regulations 405 KAR 3:070 through 405 KAR 3:190 of this chapter except as provided in subsection (4).

Section 2. Eligibility. A person or operator is eligible for an exemption under this regulation if:

(1) The actual and attributed production of that person or operator is estimated by the department and the Director of the Office of Surface Mining of the U.S. Department of Interior not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and

(2) If that person or operator:

(a) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that person or operator was 100,000 tons of coal or less from strip and underground coal mining operations; or

(b) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all strip and underground coal mining operations of that person or operator in the average calendar month was an amount of coal which when multiplied by twelve (12) yields a product of 100,000 tons or less;

(c) And, in the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.

Section 3. Applications. Applications for an exemption under this section shall be submitted to the Director of the Office of Surface Mining of the U. S. Department of Interior and to the Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Frankfort, Kentucky 40601, by March 1, 1978, or such other date as established by the Office of Surface Mining.

Section 4. Request. The request for exemption shall be in the form of an affidavit and shall include:

(1) The name and address of the person or operator and of persons who control him by reason of stock ownership or otherwise.

(2) The name, location, Mine Safety and Health Administration identification numbers, and Kentucky Department of Mines and Minerals license numbers of the underground coal mining operations for which exemption is sought, including a statement of the dates each license was issued or renewed and will expire.

(3) The date and method of creation and business organization arrangement if the person or operator is not an individual.

(4) A listing of all strip and underground coal mining operations showing:

(a) Actual production for the year ending July 31, 1977, attributed to the person or operator and the inclusive dates of operation.

(b) Estimated production for the year ending December 31, 1978, attributed to the person or operator and the anticipated dates of operation.

(5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the person or operator has published in a local newspaper of general circulation in the

area of each mine for which an exemption is sought once a week for two (2) weeks stating:

(a) That an application for a small operator exemption will be filed, which if granted would exempt the person or operator from certain environmental protection performance standards in P.L. 95-87 and KRS Chapter 350;

(b) The name and address of the person or operator;

(c) The location of the surface operations of underground coal mining to which the exemption will apply; and

(d) That public comments may be submitted to the Director, Office of Surface Mining Reclamation and Enforcement.

(7) Production from the following operations shall be attributed to the person or operator:

(a) All coal produced by operations beneficially owned entirely by the person or operator, or controlled by reasons of ownership, direction of the management, or in any other manner by the person or operator;

(b) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the person or operator owns more than a five (5) percent interest;

(c) All coal produced by persons who own more than five (5) percent of the person or operator or who directly or indirectly control the person or operator by reason of stock ownership, direction of the management or in any other manner.

(d) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the person or operator.

Section 5. (1) The department shall certify the applicant as qualified for the exemption if, based upon comments from the Office of Surface Mining or the public, or any other information, it finds that:

(a) The person or operator has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(b) The exemption will not be inconsistent with state or federal law, regulation or permit terms.

(2) Any person aggrieved by the decision of the department under this section may appeal within thirty (30) days from receipt of that decision to Franklin Circuit Court pursuant to KRS 350.032(2).

(3) The exemption shall be effective on the date approved. It shall remain in effect until December 31, 1978, or until revoked, whichever is earlier.

(4) The department shall revoke the qualification for the exemption upon finding that the qualification was erroneously issued or that the exempted operation has or will produce more than 100,000 tons of coal per year.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 10 p.m.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:040E. Operations affecting two acres or less.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for surface operations of underground coal mining which affect two acres or less.

Section 1. Definitions. The definitions of terms as stated in 405 KAR 3:040 shall apply with respect to this regulation except as otherwise specifically stated in this regulation or except as otherwise clearly indicated by the context of use of such terms in this regulation.

Section 2. General Provisions. (1) Applicability:

(a) This regulation shall apply to surface operations of underground coal mining which would affect two (2) acres or less, including surface excavations, disposal areas, access and haul roads, and other surface operations and facilities directly associated with the mining operation which are located contiguous to or in the immediate vicinity of the mining operation.

(b) This regulation shall not apply when complete feasible recovery of the coal resource at the proposed location would require operations which would affect more than two (2) acres, and the department reasonably expects that other proposals to conduct surface operations of underground coal mining in the immediate vicinity will be forthcoming in order to complete the feasible recovery of the coal resource.

(c) No permit will be issued pursuant to this regulation to conduct surface operations of underground coal mining within 200 feet of another operation for which a permit has been issued pursuant to this regulation.

(d) The provisions of this regulation shall apply only to surface operations for underground coal mining for which permits are issued on or after May 3, 1978.

(2) General Obligations. The obligations imposed upon all operators by 405 KAR 3:020, Section 5(1)(a), (b), (c), (d), (f), and (g), and the reporting requirements of 405 KAR 3:020, Section 6(1) and (3), shall apply with respect to this regulation.

Section 3. Permit Requirements. (1) The provisions of 405 KAR 3:050 shall apply with respect to this regulation, except as otherwise provided in this section.

(2) Those provisions of 405 KAR 3:050 which are listed in this subsection shall not apply with respect to this regulation.

(a) 405 KAR 3:050, Section 4(10)(b), with regard to water quality standards and surface water monitoring; and

(b) 405 KAR 3:050, Section 4(11), with regard to ground water.

Section 4. Environmental Protection Performance Standards. (1) The environmental protection performance standards set forth in this chapter in regulations 405 KAR 3:070 to 405 KAR 3:190, inclusive, shall apply with respect to this regulation except as provided in this section.

(2) Those provisions of 405 KAR 3:070 to 405 KAR 3:190, inclusive, which are listed in this subsection, shall not apply with respect to this regulation except as herein provided.

(a) Water quality standards and surface water monitoring:

1. The provisions of 405 KAR 3:140 shall not apply with respect to this regulation.

2. The department may require that the permittee monitor the quality of water discharges from the permit area in a manner prescribed by the department and submit to this department such monitoring reports as the department may require. The parameters to be monitored may include total iron, total manganese, total suspended solids, and pH.

(b) Ground water. The provisions of 405 KAR 3:150 shall not apply with respect to this regulation.

(c) Sediment control measures. The provisions of 405 KAR 3:170, Section 1(2), requiring sedimentation ponds shall not apply with respect to this regulation, except that the department may require the construction of sedimentation ponds when necessary to prevent excessive contribution of suspended solids to surface runoff from the permit area. Criteria required for design and construction of sedimentation ponds pursuant to this paragraph shall not be more stringent than criteria provided in 405 KAR 3:170.

Section 5. (1) Variances. The department may at its discretion waive any provision of this chapter with respect to this regulation, except the provisions of 405 KAR 3:020, Section 5(1)(a), (b), (c), (d), (f), and (g); 405 KAR 3:020, Section 1; and 405 KAR 3:060; upon a written finding by the department that the public and the environment will in the absence of such provisions be provided adequate protection consistent with the purpose of this chapter.

(2) In any permit issued pursuant to this regulation, the department shall not impose requirements more stringent than provided in this regulation.

Section 6. Inspection and Enforcement Procedures. The provisions of 405 KAR 3:060 shall apply with respect to this regulation.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:050E. Permit requirements.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface

effects of underground coal mining. This regulation sets forth procedures and requirements related to permits.

Section 1. Permit Required. (1) No person shall engage in surface operations of underground coal mining without having first obtained a permit from the department.

(2) The permit shall authorize the permittee to engage in surface operations of underground coal mining upon the area described in his application for a period of five (5) years from the date of issuance.

(3) The permit shall authorize surface operations of underground coal mining during a time period for which the permittee has posted appropriate bond coverage.

(4) The permit shall confer upon the permittee a qualified right to conduct surface operations of underground coal mining, but shall not relieve the permittee of responsibility to comply with all applicable federal, state and local laws and regulations.

Section 2. Preliminary Requirements. A person desiring a permit shall submit to the department a preliminary application of the form and content prescribed by the department. The preliminary application shall contain pertinent information including, but not limited to, a U. S. Geological Survey 7½ minute topographic map marked to show the approximate boundaries of the area of land to be affected or locations of mine openings, access roads, haul roads, disposal areas for excess earth and rock materials, waste disposal areas, sedimentation ponds, other processing areas, stockpile areas, loading areas, facilities for the washing or other preparation of coal. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the department. Personnel of the department shall conduct an on-site investigation of the area with the person or his representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 3. Publication of Notice of Intention to Mine. (1) A prospective applicant for a permit shall publish at least once a public notice of his intention to file an application for that permit. Such publication shall be made by advertisement in a newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed mining site is located.

(2) The publication shall be made within thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled "Notice of Intention to Mine" and shall be in a manner and form prescribed by the department and shall include, though not be limited to, the following:

(a) The name and address of the applicant;
(b) The permit application number;
(c) The location of the proposed mining site;
(d) A brief description of the mining activity proposed, together with a statement of the amount of acreage to be affected by the proposed surface operations.

(4) The applicant for a permit shall establish the date and place at which the "Notice of Intention to Mine" was published by attaching to his application an affidavit from the publishing newspaper certifying the time, place and content of the published notice.

Section 4. Permit Application. (1) A person desiring a permit shall submit an application of form and content as

prescribed by the department. The application shall be on forms provided by the department, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the department, with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the department may require.

(2) The application shall include, but not be limited to, the information described in subsections (2) through (13) of this section.

(a) The location and area of land to be affected by the operation, with a description of access to the site from the nearest public highway;

(b) The owner or owners of the surface of the area of land to be affected by the proposed operations and the owner or owners of all surface area within 500 feet or any part of the area to be affected;

(c) The owner or owners of the coal to be mined;

(d) The source of the applicant's legal right to mine coal on the land to be affected;

(e) The principal and local post-office addresses of the applicant;

(f) Whether or not the applicant or any person associated with the applicant as specified in subsection (2)(g) holds or has held any other permits under KRS Chapter 350, and an identification of such permits;

(g) Whether or not the applicant is in compliance with KRS 350.130(3) regarding past suspensions or revocations of permits, forfeitures of bond, or repeated non-compliance or violation, and whether or not every officer, partner, director or any individual owning of record or beneficially (alone or with associates) if known, ten (10) percent or more of any class of stock of the applicant, is subject to any of the provisions of KRS 350.130(3) and he shall so certify;

(h) A copy of the applicant's published notice of intention to mine and an affidavit from the publisher, pursuant to Section 3 of this regulation.

(3) Maps. The application shall include or be accompanied by five (5) copies of a United States Geological Survey 7½ minute topographic map or other such map acceptable to the department on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.

(4) Enlarged maps. The application shall include or be accompanied by five (5) copies of an enlarged United States Geological Survey 7½ minute topographic map or other such map acceptable to the department meeting the requirements of paragraphs (a) through (h) of this subsection. The map shall:

(a) Be prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. The certification shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the applicable mining laws of this state." The certification shall be signed and notarized. The department may reject any map as incomplete if its accuracy is not so attested.

(b) Identify the area of land to be affected to correspond with the application.

(c) Show adjacent underground mining and the boundaries of surface properties and names of owners on the area to be affected and within 500 feet of any part of the area to be affected.

(d) Be of a scale between 400 feet to the inch and 600 feet to the inch.

(e) Show the names and locations of all streams or other bodies of public water; wild rivers as established pursuant to KRS Chapter 146; local, state, interstate, national or other public parks; roads, schools, communities, public buildings or other public property; churches or cemeteries; commercial or institutional buildings; oil and gas wells, oil and gas lines, water and sewer lines, power and telephone lines; and dwelling houses or other residences, within 500 feet of the area of land to be affected.

(f) Show by appropriate markings the boundaries of the area of land to be affected, the total number of acres of land to be affected, and the proposed locations of roads, entries to underground works, excavations, disposal areas for rock and earth materials, disposal areas for waste materials including refuse piles and slurry ponds, sedimentation ponds, other impoundments, topsoil storage areas, stockpiles, areas and facilities for washing, crushing or other processing of coal, loading and shipping areas, repair areas, storage areas for equipment and materials, and other significant facilities incident to surface operations of underground coal mining.

(g) Show the date on which the map was prepared, the north point and the quadrangle name.

(h) Show the drainage plan on and away from the area of land to be affected. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(5) Transportation plan. The application shall include or be accompanied by a transportation plan and map of such scale and detail as the individual county maps published by the Kentucky Department of Transportation which shall set forth the portions of the county and state public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining operation.

(a) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(b) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(c) The plan shall contain a certification by a duly authorized official of the Kentucky Department of Transportation attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

(6) Topsoil handling plan. The application shall include or be accompanied by a plan for the handling of topsoil which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 3:080 with regard to topsoil handling.

(7) Backfilling and grading plan. The application shall include or be accompanied by a plan for backfilling and grading which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 3:100 with regard to backfilling and grading.

(8) Plan for disposal of excess rock and earth materials. The application shall include or be accompanied by a plan for the disposal of rock and earth materials. In excess of that required to meet the backfilling and grading requirements of 405 KAR 3:100 which shall demonstrate to

underground coal mining and reclamation operations unless the department specifically authorized operations through such a stream. The area not to be disturbed shall be designated a buffer zone and be marked as specified in 405 KAR 3:070 regarding signs and markers.

(10) Denial of permit for past violations:

(a) An operator or person whose mining permit or operation has been revoked, suspended, or terminated shall not be eligible to receive another permit or begin another operation, or be eligible to have suspended permits or operations reinstated, until he shall have complied with all the requirements of KRS Chapter 350 in respect to all permits issued him.

(b) No operator or person who has forfeited any bond shall be eligible to receive another permit or begin another operation unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator or person has paid such sum as the department finds is adequate to reclaim such lands.

(c) The department shall not issue any additional permits to, or allow future operations by, any operator or person who has repeatedly been in noncompliance with or violation of KRS Chapter 350, or who has had permits revoked or operations terminated on more than three (3) occasions.

Section 7. Increase or Decrease of Area Under Permit. Upon application by the permittee, the department may amend a valid existing permit so as to increase or decrease the permitted area of land to be affected by operations under that permit. Such applications for amendment may be filed at any time during the term of the permit.

(1) Increase of area under permit:

(a) Application. The permittee shall file an application in the same form and with the same content as required for an original application under Sections 2, 3, and 4 of this regulation.

(b) Fees. The permittee shall pay in the manner prescribed in Section 4(14) of this regulation, a basic fee of \$250 plus a fee of fifty dollars (\$50) for each acre or fraction of acre of increased area requested.

(c) The permittee shall file with the department a supplemental bond in the amount to be determined as provided in Section 4(18) of this regulation, for each acre or fraction of an acre of the increased area approved.

(d) The date of expiration of the amended permit shall be the same as the date of expiration of the permit prior to amendment.

(2) Decrease of area under permit:

(a) Application. The permittee shall file an application upon forms provided by the department, with such documentation as the department may require, showing the undisturbed area which is requested to be subtracted from the area of land covered by the existing valid permit.

(b) Release of bond. If the department approves the decrease in permitted area it shall release the bond for each acre of the decrease, but in no case shall the bond be reduced below \$5,000 except as provided in Section 4(18)(c) of this regulation.

(c) Acreage fees transferred. If the department approves the decrease in acreage under permit the fees for each acre decreased shall be returned to the permittee, or shall upon request of the permittee be transferred and credited to acreage fees in subsequent applications by the permittee.

Section 8. Renewal of Valid Existing Permit. (1) Any valid permit issued pursuant to KRS Chapter 350 shall carry with it the right of successive renewal upon expira-

tion, with respect to areas within the boundaries of the existing permit. Any permit renewal shall be for a term not to exceed the period of the original permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application which addresses any new land areas shall be subject to the full standards applicable to new applications pursuant to KRS Chapter 350, and a new and original application shall be required for such areas.

(3) Application for permit renewal shall be made not later than thirty (30) working days prior to the expiration of the existing valid permit. The holders of the permit may apply for renewal and such renewal shall be issued, and the public notice requirements of this chapter shall not apply, provided that the requirements of paragraphs (a) through (f) of this subsection are met.

(a) The application for renewal shall be submitted in the form, manner and content as prescribed by the department.

(b) The permittee shall submit, in the manner prescribed by the department, all revised or updated information required by the department. Such information shall include, but not be limited to, an updated operational plan current to the date of request for renewal, showing the status and extent of all surface operations and reclamation operations on the existing permit.

(c) The terms and conditions of the existing permit are being satisfactorily met.

(d) The present surface operations and reclamation operations are in compliance with the environmental protection standards of this chapter as set forth in 405 KAR 3:070 through 405 KAR 3:190.

(e) The operator shall provide evidence that the performance bond is in effect for the renewal requested, as well as any additional bond which the department might require.

(4) Prior to approval of any permit renewal the department shall provide notice to the appropriate public authorities.

Section 9. Succession of One Operator by Another. (1) Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease or otherwise, the department may release the first operator from all liability under this chapter for that particular operation provided the requirements of paragraphs (a) and (b) of this subsection are met:

(a) The successor operator shall have been issued a permit and shall have otherwise complied with the requirements of this chapter; and

(b) The successor operator shall assume as part of his obligation under this chapter, all liability for the reclamation of land areas affected by the former operator.

(2) A successor in interest to a permittee who applies for a new permit within thirty (30) days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface operations and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

Section 10. Strip Mining Operations on Areas of Surface Operations of Underground Coal Mining. If approved by the department, a permittee may conduct strip mining operations on areas of land covered by a valid permit for surface operations of underground coal mining, provided

that a permit is obtained from the department and such strip mining operations are conducted in accordance with procedures and environmental protection performance standards as contained in KRS Chapter 350 and regulations adopted pursuant thereto regarding strip mining operations.

(1) Application for approval. In applying to the department for such permit the applicant shall apply for a permit as required by KRS Chapter 350 and regulations adopted pursuant thereto for strip mining operations. The applicant shall also file a revised copy of the map of the area on which the valid permit for surface operations was based, on which he shall designate the proposed strip mining operations and other parts of the area necessary to the conduct of strip mining operations.

(2) Deferral of reclamation. Subject to compliance with the water quality standards of 405 KAR 3:140, and subject to the requirements of KRS Chapter 350 and regulations adopted pursuant thereto regarding strip mining operations, the department may authorize the permittee to defer the reclamation of the area disturbed by strip mining operations if necessary to the conduct of surface operations of underground coal mining.

(3) Bond to remain in effect. The bond covering such area shall remain in effect until reclamation of such area has been completed by the permittee as required by the provisions of KRS Chapter 350 and regulations adopted pursuant thereto.

Section 11. Release of Bond. (1) When the backfilling and grading have been completed for an area in a manner consistent with the requirements of this chapter, and the soil pH level as required by the department has been established, the permittee may submit to the department a report and request for partial release of bond for the area. The report shall state the number of acres and type of area affected for which the partial bond release is requested and shall contain appropriate maps, cross-sections, and other engineering and technical documentation as the department may require to demonstrate to the satisfaction of the department that the requirements of this chapter have been met with regard to backfilling and grading and that the required soil pH level has been established.

(2) Upon verification of the report and request, the department shall release to the permittee the bond which was posted for that area in its full amount less \$300 per acre.

(3) After the preparation, planting and mulching of a given area and after not less than two (2) growing seasons, the permittee may submit a report for release of the remaining bond of \$300 per acre. The report shall demonstrate to the satisfaction of the department that the requirements of this chapter have been met with regard to revegetation, and that surface drainage from the area meets the water quality standards of this chapter prior to any treatment of the drainage.

(4) After verification of the request and report of vegetation and water quality, the department shall release to the permittee the remaining bond in the full amount of \$300 per acre.

(5) Transfer of liability. A person or organization, having qualifications acceptable to the department, may post bond or a cash deposit in a sum determined by the department and assume the liability for carrying out the reclamation plan approved by the department in areas where the mining operation and any necessary backfilling and grading have been completed. The department shall then

release the bond posted by the permittee for such area.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:060E. Inspection and enforcement procedures.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth procedures for inspection and enforcement.

Section 1. Inspection Procedures. The department shall make such inspections or investigations as it deems necessary to insure compliance with any provision of KRS Chapter 350 and regulations adopted pursuant thereto.

Section 2. Enforcement Procedures. (1) Determination of violations. The department shall determine whether violations of the provisions of KRS Chapter 350 and regulations adopted pursuant thereto have occurred.

(2) Notice of violations. If the department determines that such violations have occurred, the department shall by certified mail (return receipt requested) provide written notice to the operator that such violations have occurred and shall therein stipulate a reasonable time period for the feasible correction of such violations.

(3) Notice of noncompliance, order of suspension:

(a) If any of the requirements of KRS Chapter 350 or rules and regulations adopted pursuant thereto have not been complied with within the time limits set by the department or by KRS Chapter 350 or regulations adopted pursuant thereto, the department shall cause a notice of noncompliance to be served upon the operator; or where found necessary, the secretary shall, after a hearing (except as provided in KRS 224.071), order the suspension of a permit or operation.

(b) Such notice or order shall be handed to the person in charge of the operation. Such notice or order shall also be handed to the operator in person, or shall be served upon the operator by certified mail (return receipt requested), or by registered mail, addressed to the permanent address shown on the permit application. If no address is shown on the application, then such notice or order shall be mailed to such other address as known to the department.

(c) The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with KRS Chapter 350 or the regulations or orders of the department.

(4) Revocation of permit; termination of operation; forfeiture of bond. If the operator has not reached an agreement with the department or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked or the operation terminated, after a hearing, by order of the department and the performance bond, if any, shall then be forfeited to the department.

Section 3. Penalties. Any person or operator who violates any of the provisions of KRS Chapter 350 or regulations adopted pursuant thereto, or who fails to perform the duties imposed by such provisions, or who violates any determination or order promulgated pursuant to the provisions of KRS Chapter 350, shall be subject to civil and criminal penalties as set forth in KRS 350.990.

Section 4. Hearing. (1) An operator or permittee aggrieved by the actions of the department pursuant to this regulation may by written notice request that a hearing be conducted by the department. The right to demand such 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 such notice. The department shall schedule a hearing before the department not less than twenty-one (21) days after notice of demand for such a hearing. 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 regulations involved; and a short statement of the reason for the granting of the hearing.

(2) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a pre-hearing 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 pre-hearing conference by stipulation, agreed settlement, consent order or default.

(3) (a) 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, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice.

(b) 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 of 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. Notice may be taken of generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference

in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(c) It will be within the hearing officer's discretion to require official transcripts or to set up other procedures for taking evidence. 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 payment of the actual cost of reproducing the original except as provided in KRS 224.035.

(d) 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 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 seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary shall consider the report and recommended order and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer and the department's or issue his own written order based on the report and recommended order. The secretary shall act within twenty (20) days of the deadline for filing exceptions, unless extensions of time have been granted to the hearing officer, pursuant to paragraph (e).

(e) After completion of the hearing and filing of exceptions, the department shall notify the applicant in writing, certified mail, return receipt requested, of the final decision of the department. If any extension of time is granted by the secretary for a hearing officer to complete his report, the department shall notify all parties at the time of the granting of the extension. Parties shall have seven (7) days to file exceptions to the report and recommended order if such an extension is granted.

(f) 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.

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

(h) There shall be no ex parte communications between a hearing officer and parties to the action.

(i) Any person aggrieved by a final order of the department may have recourse to the courts as set forth in KRS 224.085 and 350.032(2).

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:070E. Signs and markers.

RELATES TO: KRS 350.151
PURSUANT TO: KRS 13.082, 350.151
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements relating to the postmining use of land.

Section 1. General. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. Signs and other markers shall be maintained by the permittee during all operations to which they pertain and shall be kept legible and visible and shall conform to all local ordinances and codes. The department may establish standards for construction of signs and markers as necessary to accomplish the purposes of this regulation.

Section 2. Mine and Permit Identification Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall clearly identify the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds. Failure to post such signs shall be grounds for revocation of the permit.

(2) Signs constructed pursuant to this section shall be constructed of wood or other durable material, with the sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 3. Buffer Zone Markers. Land areas within 100 feet of perennial and intermittent streams shall not be disturbed unless specifically authorized by the department. Such areas to be undisturbed are to be designated as buffer zones and shall be marked along the interior boundary of the buffer zone in a manner consistent with perimeter markers.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
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**DEPARTMENT FOR NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:080E. Topsoil handling and revegetation.

RELATES TO: KRS 350.151
PURSUANT TO: KRS 13.082, 350.151
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements relating to revegetation or the handling of topsoil.

Section 1. Topsoil Handling. Topsoil shall be removed as a separate operation from areas to be disturbed by surface operations, such as roads and areas upon which support facilities are to be sited. Selected overburden materials may be used instead of, or as a substitute for topsoil where the resulting soil medium is determined by the department to be equal to or more suitable for revegetation. Topsoil shall be segregated, stockpiled, and protected from wind and water erosion, or contaminants. Disturbed areas no longer required for the conduct of mining operations shall be regraded, topsoil distributed, and revegetated.

Section 2. Revegetation. The permittee shall establish on all land that has been disturbed by mining operations a diverse, effective, and permanent vegetative cover capable of self-regeneration and plant succession, and adequate to control soil erosion. Introduced species may be substituted for native species if approved by the department. Introduced species shall meet applicable state and federal seed or introduced species statutes, and may not include poisonous or potentially toxic species.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:090E. Access roads, haul roads, and other transport facilities.

RELATES TO: KRS 350.151
PURSUANT TO: KRS 13.082, 350.151
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for design, construction, maintenance and reclamation of access roads, haul roads and other transport facilities.

Section 1. General. (1) Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by state or federal law.

(2) The effluent limitations of 405 KAR 3:130 shall not apply to drainage from access and haul roads located outside the disturbed area, as defined in 405 KAR 3:130, unless otherwise specified by the department.

Section 2. Construction. All access and haul roads shall be constructed in accordance with the requirements of this section.

(1) Roads shall not be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding.

(2) All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion.

(3) Roads shall not be located in active stream channels.

(4) Stream fords are prohibited unless they are specifically approved by the department as temporary routes across dry streams that will not adversely affect sedimentation and will not be used for coal haulage.

(5) Other stream crossings shall be made using bridges, culverts, or other structures designed and constructed to meet the requirements of this regulation.

(6) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the grade restrictions of this subsection or other grades determined by the department to be necessary to control erosion.

(a) The overall sustained grade shall not exceed 1v:10h (ten (10) percent);

(b) The maximum grade greater than ten (10) percent shall not exceed 1v:6.5h (fifteen (15) percent) for more than 300 feet.

(c) There shall not be more than 300 feet of grade exceeding ten (10) percent within each 1,000 feet.

(7) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used.

(8) Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(9) All fill slopes and earth cut slopes shall be seeded in accordance with 405 KAR 3:080.

Section 3. Drainage. (1) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, pipes, culverts, cross drains, and ditch relief drains.

(2) For access and haul roads that are to be maintained for more than one (1) year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a ten (10) year twenty-four (24) hour precipitation event.

(3) Ditch-relief and cross drains shall be spaced according to grade.

(4) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(5) Drainage ditches shall be provided at the toe of all cut slopes formed by the construction of roads.

(6) Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area

could impair the functions of drainage and sediment control structures.

Section 4. Maintenance. (1) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping, or surfacing.

(2) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

Section 5. Removal and Reclamation. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of 405 KAR 3:100 and 405 KAR 3:080 unless retention of a road is approved by the department and necessary maintenance to adequately control erosion is assured.

Section 6. Access roads constructed for and used only to provide infrequent service to surface facilities such as ventilators or monitoring devices shall be exempted from the requirements of Sections 2 and 3 of this regulation provided adequate stabilization to control erosion is achieved through use of alternative measures.

Section 7. Other Transport Facilities. Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 3:100E. Backfilling and grading.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements relating to the backfilling and grading of areas affected by underground mining operations.

Section 1. Upon completion of underground mining, surface work areas which are involved in excavation, disposal of materials, or otherwise affected, shall be regraded to approximate original contour. The permittee

shall transport, backfill and compact fill material to assure stability or to prevent leaching of toxic pollutants. Barren rock or similar materials excess to the mining operations and which are disposed on the land surface shall be subject to the provisions of 405 KAR 3:110 of this chapter.

Section 2. Roads and support facility areas existing prior to May 3, 1978, the effective date of this regulation, and used in support of underground mining operations shall be regraded to the extent deemed feasible by the department based on the availability of backfill material and resulting stability of the affected lands after reclamation. As a minimum, the permittee shall be required to:

(1) Retain all earth, rock and other mineral non-waste materials on the solid portion of existing or new benches, except that the department may permit placement of such material at the site of the faceup as a means of disposing of excavated spoil when additional working space is needed to facilitate operations. Such placement of material shall be limited to minimize disturbance of land and to the hydrologic balance. Such fills shall be stabilized with vegetation and shall achieve a minimum static safety factor of 1.5. In no case shall the outslope exceed the angle of repose.

(2) Backfill, compact, and grade spoil material to the most moderate slope possible to eliminate any highwall along roads, mine entry faces or other areas like spoil piles, and depressions. Slopes shall not exceed the angle of repose or such lesser slopes as required by the department to maintain stability.

Section 3. Slope Measurements. (1) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the department, in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the area to be disturbed; or, where this is impractical, at locations specified by the department. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the department to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from topographic maps showing contour lines having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(2) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of predisturbed slope conditions and approved by the department. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

Section 4. Final Graded Slopes. (1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to Section 3(1) or any lesser slope specified by the department based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform.

(2) On approval by the department and in order to conserve soil moisture, ensure stability, and control erosion on

final graded slopes, cut-and-fill terraces may be allowed if the terraces are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed twenty (20) feet unless specifically approved by the department as necessary for stability, erosion control, or roads.

(b) The vertical distance between terraces shall be as specified by the department to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (fifty (50) percent). Outslopes which exceed 1v:2h (fifty (50) percent) may be approved if they have a minimum static safety factor of 1.5 or more and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on terraces only when approved by the department.

Section 5. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas in accordance with 405 KAR 3:080 with regard to revegetation. The department shall specify that rills or gullies of lesser size be stabilized if they result in additional erosion and sedimentation.

Section 6. Covering and Stabilization. (1) Any acid-forming, toxic-forming, combustible materials, or any other waste materials as identified by the department that are exposed, used, or produced during underground mining and which are deposited on the land surface shall, after placement in accordance with 405 KAR 3:110 with regard to disposal of excess rock and earth materials, be covered with a minimum of four (4) feet of nontoxic and non-combustible material; or, if necessary, treated to neutralize toxicity, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the department shall specify thicker amount of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to pose a threat of water pollution or otherwise violate the provisions of 405 KAR 3:130 with regard to protection of the hydrologic system.

(2) Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or subsurface waters and wherever necessary to ensure the stability of the backfilled materials. The method of compacting backfill material and the design specifications shall be approved by the department before the acid-forming or toxic-forming materials are covered.

Section 7. Steep Slopes. All surface operations on steep slopes of twenty (20) degrees or more or on such lesser slopes as the department may define as a steep slope shall be conducted so as not to place any material on the downslope below road cus, mine working or other benches, other than in conformance with Section 2(1) of this regulation.

Section 8. Grading along the Contour. All final grading, preparation of earth, rock and other nonwaste materials before replacement of topsoil, and placement of topsoil, in accordance with the provisions of 405 KAR 3:080 (topsoil handling), shall be done along the contour unless such grading would be hazardous to equipment operators. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:110E. Disposal of excess rock and earth.

RELATES TO: KRS 350.151
PURSUANT TO: KRS 350.151
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for the disposal of excess rock and earth materials.

Section 1. General. Excess rock and earth materials produced from an underground mine and not disposed in underground workings or used in backfilling and grading operations shall be transported to and placed in surface disposal areas other than the mine workings or excavations, provided that such transport and placement are conducted in a controlled (engineered) manner approved by the department, and provided the requirements of this regulation are met.

Section 2. Disposal of Excess Rock and Earth in Valley Fills or Head-of-Hollow Fills. Excess rock and earth to be disposed of in valley fills or head-of-hollow fills shall be placed in accordance with the provisions of this section and any other applicable provisions of this chapter. (1) The disposal areas shall be within the permit area, and they must be approved by the department as suitable for construction of fills in accordance with the requirements of this regulation.

(2) The disposal site shall be near the ridge top of a valley selected to increase the stability of the fill and to reduce the drainage area above the fill. Where possible, excess rock and earth shall be placed above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer and approved by the department.

(4) All organic material shall be removed from the

disposal area and the topsoil must be removed and segregated pursuant to 405 KAR 3:080 before the material is placed in the disposal area. However, if approved by the department, organic material may be used as mulch or may be included in the topsoil.

(5) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope designated by the department based on local conditions, measures such as keyway cuts (excavation to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

(6) A system of underdrains constructed of durable rock shall be installed along the natural drainage system, shall extend from the toe to the head of the fill and contain lateral drains to each area of potential drainage or seepage. In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. No rock shall be used in underdrains if it tends to easily disintegrate and thereby clog the drain or if it is acid-forming or toxic-forming. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Drain size in feet	
		Width	Height
Less than 1 million cubic yards	Sandstone	10	4
	Shale	16	8
More than 1 million cubic yards	Sandstone	16	8
	Shale	16	8

(7) Excess earth and rock shall be transported and placed in a controlled manner and concurrently compacted as specified by the department in lifts that are less than four (4) feet thick in order to achieve the densities designed to ensure mass stability, to prevent mass movement, to avoid contamination of the rock undergrain and to prevent formation of voids.

(8) Terraces shall be constructed to stabilize the face of the fill at intervals not to exceed fifty (50) feet measured vertically between terraces. The width of the terrace shall not be less than twenty (20) feet.

(9) The tops of the fill and each terrace shall be graded no steeper than 1v:20h (five (5) percent) and shall be constructed to drain surface water to the sides of the fill where stabilized surface channels shall be established off the fill to carry drainage away from the fill. Drainage shall not be directed over the outslope of the fill unless approved by the department.

(10) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill by approved structures leading into water courses.

(11) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The department may require a flatter slope.

(12) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods and at least quarterly throughout construction to assure removal of all organic material and topsoil, placement of under-drainage systems, and proper construction of terraces according to the approved design. The registered engineer or other

qualified professional specialist shall provide to the department a certified report after each inspection that the fill has been constructed as specified in the design approved by the department.

(13) Waste materials shall not be placed in valley fills or head-of-hollow fills which are used for disposal of excess rock and earth, except as specifically authorized by the department.

Section 3. Disposal of Excess Rock and Earth in Areas Other than Valley Fills or Head-of-Hollow Fills. Excess rock and earth to be disposed of in areas other than valley fills or head-of-hollow fills shall be placed in accordance with the provisions of this section and any other applicable provisions of this chapter.

(1) The disposal areas shall be within the permit area, and they must be approved by the department as suitable for construction of fills in accordance with the requirements of this regulation.

(2) The disposal areas shall be located on the most moderate sloping and naturally stable areas available as approved by the department. Where possible, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(4) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope designated by the department based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

(5) The disposal area shall not contain springs, natural water courses, or wet weather seeps unless underdrains and lateral drains are designed and constructed in such a manner that infiltration of the water into the excess rock or earth pile will be prevented.

(6) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to 405 KAR 3:080 before the excess rock and earth material is placed in the disposal area. However, if approved by the department, organic material may be used as mulch or may be included in the topsoil.

(7) The excess rock and earth shall be transported and placed in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure long-term stability. Terraces shall not be constructed unless approved by the department.

(8) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction or terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide to the department a certified report after each inspection that the fill has been constructed as specified in the design approved by the department.

(9) If any portion of the fill interrupts, obstructs, or encroaches upon any natural drainage channel, the entire fill is classified as a valley or head-of-hollow fill and must be designed and constructed in accordance with the requirements of Section 2 of this regulation.

Section 4. Where the volume of the excess rock and

earth is small and its chemical and physical characteristics do not pose a threat to either public safety or the environment, the department may modify the requirements of the previous sections of this regulation in accordance with 405 KAR 3:100, Section 2(1), regarding backfilling and grading.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:120E. Acid and toxic materials and waste materials.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for the handling of acid and toxic materials and waste materials.

Section 1. General. Drainage to ground and surface waters which emanates from acid-forming or toxic-forming mine waste materials and spoils placed on the land surface shall be avoided by:

(1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgment of the department, will be toxic to vegetation or that will adversely affect water quality if not treated or buried;

(2) Preventing or removing water from contact with acid- or toxic-producing deposits;

(3) Burying or otherwise treating all toxic or harmful materials within thirty (30) days if such materials are subject to wind and water erosion, or within a lesser period designated by the department. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water;

(4) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of this chapter;

(5) All acid-forming or toxic-forming materials, combustible materials, coal preparation waste materials, or other waste materials identified by the department, that are exposed, used, or produced during mining shall be covered with a minimum of four (4) feet of nontoxic and non-combustible material. If necessary, such materials shall be treated to neutralize toxicity in order to prevent water pollution or sustained combustion and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts or exposure by erosion, to provide an adequate depth for plant growth, or

to otherwise meet local conditions, the department shall specify greater depths of cover using nontoxic material.

(6) All methods of material placement and compaction pursuant to this section shall be approved by the department.

(7) Waste materials used as fill shall meet the provisions of this regulation and the provisions of 405 KAR 3:100, Section 6.

Section 2. Coal Waste. (1) Coal waste ponds and other coal waste materials shall be maintained according to the provisions of this regulation, and the provisions of 405 KAR 3:180 shall also apply.

(2) Waste materials from coal preparation plants shall be buried or otherwise treated within ninety (90) days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with the provisions of this regulation and the provisions of 405 KAR 3:100 with respect to backfilling and grading.

Section 3. The department may require other actions necessary to assure that the provisions of this regulation are met.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
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**DEPARTMENT FOR NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:130E. Protection of the hydrologic system.

RELATES TO: KRS 350.151
PURSUANT TO: KRS 13.082, 350.151
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for minimizing disturbances to the hydrologic system.

Section 1. General. The permittee shall plan and conduct surface operations of underground coal mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from underground coal mining operations, both on and off site.

(1) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized and applicable federal and state statutes and regulations are not violated.

(2) The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize surface operations of underground coal

mining and reclamation practices which will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities prior to discharge to surface waters. Such practices include, but are not limited to, diverting water from underground workings of preventing water contact with acid or toxic-forming materials, and minimizing water contact time with waste materials, stabilizing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation. If pollution can be controlled only by treatment, necessary water treatment facilities shall be operated and maintained by the permittee for as long as treatment is required.

Section 2. Sealing of Surface Openings. (1) Vertical holes such as boreholes, shafts and wells, and approximately horizontal holes such as auger holes, shall be cased, sealed or otherwise managed to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality.

(2) All boreholes that are within the permit area but are outside the area of the surface coal mining area or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the department, unless the boreholes have been approved for use in monitoring.

Section 3. Water Rights and Replacement. The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface operations of underground coal mining by the permittee.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

**DEPARTMENT FOR NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:150E. Ground water systems.

RELATES TO: KRS 350.151
PURSUANT TO: KRS 13.082, 350.151
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for protection of the ground water system and ground water monitoring.

Section 1. Ground Water Systems. Underground operations shall be conducted to minimize adverse effects on ground water flow and quality, and to minimize offsite effects. The permittee will be responsible for performing

monitoring according to Section 2 of this chapter to ensure operations conform to this requirement.

Section 2. Monitoring. Ground water levels, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the department to determine the effects of underground coal mining operations on the quantity and quality of water in ground water systems at the mine area and in associated off-site areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells which can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The department may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the department, additional hydrologic tests, such as aquifer tests, must be undertaken by the permittee to demonstrate compliance with Section 1 of this regulation.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 3:160E. Diversions of surface and underground flows.

RELATES TO: KRS 350.151
PURSUANT TO: KRS 13.082, 350.151
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements relating to diversions of surface and underground water flows.

Section 1. Diversions of Overland Flows. In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, if required or approved by the department, be diverted away from disturbed areas by means of temporary or permanent diversion structures. the following requirements shall be met:

(1) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to stream-flow or to runoff outside the permit area to the extent possible using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable state or federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenance

of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(2) Temporary diversion structures are those used during surface operations and reclamation. When no longer needed, these structures shall be removed and the areas reclaimed. Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one (1) year recurrence interval, or a larger event as specified by the department. The design criteria must assure adequate protection of the environment and public during existence of the temporary diversion structures.

(3) Permanent diversion structures are those remaining after surface operations and reclamation and approved for retention by the department and other appropriate state and federal agencies. To protect fills and property, to prevent water from contacting toxic-producing deposits, and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval or a larger event as specified by the department. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the department.

Section 2. Stream Channel Diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the department and they are in compliance with local, state, and federal statutes and regulations. When stream-flow is allowed to be diverted, a new stream channel shall be designed and constructed to meet the requirements of this section.

(a) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to stream-flow or to runoff outside the permit area to the extent possible using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the department for temporary diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.

(b) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a ten (10) year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the department.

(c) Fish and wildlife habitat and water vegetation of significant value for wildlife shall be protected in consultation with appropriate state and federal fish and wildlife management agencies.

(2) All temporary diversion structures shall be removed, and the affected land regraded and revegetated consistent with the requirements of this chapter regarding backfilling, grading and revegetation. At the time such diversions are removed, the permittee shall insure that downstream water treatment facilities previously protected by the diversion are either modified or removed to prevent overtopping or failure of the facilities.

Section 3. Stream Buffer Zone. No land within 100 feet of an intermittent or perennial stream shall be disturbed by

surface operations of underground coal mining unless the department specifically authorizes operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 3:070 regarding signs and markers.

Section 4. Discharge Structures. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

Section 5. Discharge of Waters into Underground Mines. Surface and ground waters shall not be discharged or diverted into underground mine workings.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

405 KAR 3:180E. Coal waste dams.

RELATES TO: KRS 350.151
PURSUANT TO: KRS 13.082, 350.151
EFFECTIVE: May 3, 1978
EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for the design, construction, maintenance and reclamation of coal waste dams.

Section 1. General. No waste material shall be used in new dams without the approval of the department. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this regulation.

Section 2. Construction of Dams. (1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of 30 CFR 77.216(a) shall be approved by the department before construction and shall contain the minimum plan requirements established by the Mine Safety and Health Administration pursuant to 30 CFR 77.216-2.

(3) Construction requirements are as provided in this subsection:

(a) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not

cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the department.

(b) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least three (3) feet to avoid overtopping by wind and wave action.

(c) Dams shall have minimum safety factors as provided in the following table:

Case	Loading Condition	Minimum Safety Factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation	1.5
III	Steady seepage from spillway or decant crest	1.5
IV	Earthquake (cases II and III with seismic loading)	1.0

(d) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in this regulation and for all increments of construction.

(e) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(f) Allowances shall be made for settlement of dams and foundations so that the required freeboard will be maintained.

(g) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated within ten (10) days by spillways or decants of ninety (90) percent of the volume of water stored during the design precipitation event.

(h) During construction of dams subject to this regulation the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(i) A permanent identification marker, at least six (6) feet high that shows the dam number assigned pursuant to 30 CFR 77.216-1 and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within thirty (30) days of certification of design pursuant to this regulation.

(4) All dams, including those not meeting the size or other criteria of 30 CFR 77.216-1, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mine Safety and Health Administration regulations pursuant to 30 CFR 77.216-3.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection

and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this regulation shall be certified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual certification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the department before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the department approves retention of such dams as being compatible with an approved postmining land use.

(9) Coal waste dams constructed pursuant to this regulation shall be approved by the department, designed, constructed and maintained according to the provisions of KRS 151.250 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 10 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:190E. Permanent impoundments.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

EFFECTIVE: May 3, 1978

EXPIRES: August 31, 1978

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for permanent water impoundments.

Section 1. General Requirements. The permittee may construct, if authorized by the department, permanent water impoundments on mining sites only when they are adequately demonstrated to be in compliance with the requirements of this chapter in addition to the following requirements:

(1) The size of the impoundment is adequate for its intended purposes.

(2) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006).

(3) The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable federal and state law.

(4) The level of water will be reasonably stable.

(5) Final grading will comply with the provisions of the backfilling and grading requirements of 405 KAR 3:100 and will provide adequate safety and access for proposed water users.

(6) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

Section 2. Permanent impoundments shall be approved by the department, designed, constructed and maintained in accordance with the provisions of KRS 151.250 and regulations adopted pursuant thereto.

Section 3. The following regulations are hereby repealed: 402 KAR 1:025, 402 KAR 1:030, 402 KAR 1:035, 402 KAR 1:040, 402 KAR 1:045, 402 KAR 1:050, 402 KAR 1:055, and 402 KAR 1:060.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978
APPROVED: EUGENE F. MOONEY, Secretary
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Amended Regulations Now In Effect

CABINET FOR DEVELOPMENT Department of Fish and Wildlife Resources As Amended

301 KAR 3:021. Hunting and fishing license fees.

RELATES TO: KRS 150.025, 150.175, 150.237, 150.225

PURSUANT TO: KRS 13.082

EFFECTIVE: May 3, 1978

NECESSITY AND FUNCTION: The Commissioner, with the concurrence of the Fish and Wildlife Resources Commission, finds it necessary to establish the hunting and fishing license fees schedule in this regulation to generate the necessary funds to finance programs to protect, manage, and conserve the fish and wildlife resources of the state so a permanent and continued supply will be maintained for the benefit of present and future generations.

Section 1. License fees for hunting and fishing are as follows:

(1) Sport fishing licenses:

Statewide fishing license (resident): \$6.50

Statewide fishing license (nonresident): \$14.00

Ohio River fishing license (resident Ohio, Indiana and Illinois only) \$6.50

15-day fishing license (nonresident only): \$5.50

3-day fishing license (nonresident only): \$4.00

Trout stamp \$3.00

(2) Commercial fishing license:

Commercial fishing license (resident) plus 10 commercial gear tags: \$62.50

Commercial fishing license (nonresident) plus 10 nonresident commercial gear tags: \$125.50

Ohio River commercial fishing license (resident Ohio, Indiana and Illinois only) plus 10 Ohio River commercial gear tags: \$62.50

(3) Commercial fishing gear tag (not to be sold singly):

Commercial fishing gear tag (resident) blocks of 10 tags: \$18.50

Commercial fishing gear tag (nonresident) block of 10 tags: \$50.50

Ohio River commercial fishing gear tag (resident Ohio, Indiana and Illinois only) block of 10 tags: \$18.50

(4) Special experimental commercial fishing permit: \$500.00

(5) Live fish and bait dealers license:

Live fish and bait dealers license (resident) Separate license required for each place of business: \$22.50

Live fish and bait dealers license (nonresident): \$37.50

(6) Mussel license:

Musseling license (resident): \$22.50

Musseling license (nonresident): \$300.50

Mussel buyer's license (resident): \$125.50

Mussel buyer's license (nonresident): \$350.50

(7) Hunting license:

Statewide hunting license (resident): \$6.50

Statewide hunting license (nonresident): \$35.00

Statewide hunting license, small game only (3-day nonresident): \$12.50

Statewide junior hunting license (resident only): \$3.50

(8) Hunting and fishing license (combination resident): \$12.00

(9) Trapping license:

Trapping license (statewide resident): \$10.00 [\$20.00]

Trapping license (resident landowner/tenant): \$5.00

Trapping license (nonresident): \$100.00

Trap tags: \$.15

(10) Big Game license:

Big Game permit, deer (resident or nonresident): \$10.50

Big Game permit, turkey (resident or nonresident): \$5.50

(11) Taxidermist license: \$10.00

(12) Commercial guide license:

Commercial guide license (resident): \$12.50

Commercial guide license (nonresident): \$37.50

(13) Fur dealer's license:

Fur processor's license (resident): \$125.00

Fur buyer's license (resident): \$25.00 [\$50.00]

Fur buyer's license (nonresident): \$200.00

(14) Special nonresident hunting preserve license valid only for preserve issued (not required if hunter has valid hunting license): \$6.50

(15) Kentucky regulated shooting preserve permit: \$30.00

(16) Pet and propagation permit: \$5.00

(17) Scientific fish and wildlife collecting permit, educational: \$1.00

(18) Food permit:

Food permit for selling bobwhite quail from propagation farms only: \$125.00

Retail food permit for propagated quail: \$2.00

(19) Commercial waterfowl shooting permit (operator's license): \$35.00

(20) Falconry permit (birds of prey): \$10.00

(21) Pay lake license (Minimum \$50 for first two (2) acres or less; \$10 per additional acre or part thereof, up to maximum of \$100)

Section 2. The kind of license or tags authorized by this regulation shall not be changed, altered, or defaced in any manner, except trout stamp, which must carry the licensee's signature in ink across the face of stamp and be attached to the back of the proper fishing license. All licenses, permits, tags, and stamps are nontransferrable.

Section 3. This regulation shall become effective on January 1, 1979, on which date 301 KAR 3:020 is repealed.

DR. J. C. SALATE, Chairman

ARNOLD L. MITCHELL, Commissioner

ADOPTED: March 6 1978

APPROVED:

WILLIAM L. SHORT, Secretary

RECEIVED BY LRC: March 14, 1978 at 4:20 p.m.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Plumbing
As Amended

401 KAR 1:090. Water supply and distribution.

RELATES TO: KRS Chapter 318

PURSUANT TO: KRS 13.082, [224.033,] 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it.

Section 1. Quality. The bacteriological and chemical quality of the water supply shall comply with the regulations of the department.

Section 2. Distribution. The water supply shall be distributed through a piping system entirely independent of any other piping system.

Section 3. Water Service. The water service piping to any building shall be not less than three fourths ($3/4$) inch but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures on all floors at all times. The water service may be laid in the same trench with the house sewer provided the water piping is benched eighteen (18) inches above the sewer.

Section 4. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. Every water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a four (4) gallon flushing capacity for a water closet and at least a two (2) gallon capacity for a urinal. When a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, such valves shall be set above the fixture in a manner so as to prevent any possibility of polluting the potable water supply by back siphonage. All such fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that will prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 5. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent any contamination of the potable water supply system.

Section 6. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths ($3/4$) inch. The hot and cold water piping shall extend three-fourths ($3/4$) inch in size to the first fixture branch regardless of the kind of material used. When galvanized iron pipe is used

the distribution piping shall be arranged so that no two (2) one-half ($1/2$) inch fixture branches are supplied from any one-half ($1/2$) inch pipe.

(2) The following schedule shall be used for sizing the water supply piping to fixtures:

Fixture Branches	Size Minimum Inches
Sill Cocks	$1/2$
Hot water boilers	$3/4$
Laundry trays	$1/2$
Sinks	$1/2$
Lavatories	$3/8$
Bathtubs	$1/2$
Water closet tanks	$3/8$
Water closet flush valves	1

Section 7. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing conforming to ASTM B-586-73, fusion welded copper tubing conforming to ASTM B-447-72 and ASTM B-251, DWV welded brass tubing conforming to B-587-73, seamless stainless steel tubing, Grade H conforming to CS A-268-68, *reinforced thermosetting resin pipe conforming to ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold)*, Polyethylene plastic pipe conforming to ASTM D-2239-69, PVC plastic pipe conforming to ASTM 1785, and CPVC plastic pipe conforming to CS D-2846-70, plastic pipe and fittings shall bear the NSF seal of approval. Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall conform to ASTM 3309, *and polybutylene plastic pipe conforming to ASTM 2662 for cold water applications only*. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be of the approved type. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. When Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor is shall be wrapped with an approved material that will permit expansion or contraction. In no instance shall Polyethylene, PVC or CPVC be used below ground under any house or building.

Section 8. Temperature and Pressure Control Devices for Shower Installations. Temperature and pressure control devices shall be installed on all shower installations that will maintain an even temperature and pressure and will provide non-scald protection. Such devices shall be installed on all installations other than in homes or apartment complexes.

Section 9. Water Supply Control. A main supply valve shall be placed inside a foundation wall. Each fixture or each group of fixtures shall be valved and each lawn sprinkler opening shall be valved.

Section 10. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 11. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. When a water heater is installed in a location that has a floor drain the discharge from the relief device shall be piped to within two (2) inches of the floor; when a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. Relief devices shall be installed on a pneumatic water system.

Section 12. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. Such approval shall be obtained before an installation is made.

Section 13. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the other sections of this code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two (2) three-fourths (3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or equal with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which will encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shut-off valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and waste cock.

ROBERT D. BELL, Secretary

ADOPTED: November 11, 1977

RECEIVED BY LRC: April 19, 1978 at 10:30 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
As Amended

805 KAR 4:010. Licensing blasters.

RELATES TO: KRS 351.315, 351.325 [351.320, 351.330, 351.340, 351.990]

PURSUANT TO: KRS 13.082, 351.335 [351.340]

NECESSITY AND FUNCTION: KRS 351.315 [351.320] requires the Department of Mines and Minerals to license blasters. This regulation spells out the licensing requirements and duties of a blaster to effect this law.

Section 1. Licensing of Blasters. (1) No person shall detonate explosives in any blasting operation in which more than five (5) pounds of explosives or the equivalent are used in a single charge or in which less than five (5) pounds of explosives is used by a regular user, excluding blasting for agriculture and underground coal, unless he is licensed by the department. The department shall issue a license to use explosives to any person who:

(a) Has worked in blasting operations for at least twenty-four (24) months under the immediate supervision of an experienced blaster; and

(b) Has passed an examination, prescribed by the department which shall test the examinee's practice of blasting operations and the storage, moving, handling, and detonation of explosives.

(2) Application for license shall be in writing upon a form furnished by the department and shall be accompanied by a fee of ten dollars (\$10). If the applicant is successful in passing the examination, a license to detonate explosives shall be issued upon the payment of an additional fee of five dollars (\$5).

(3) The department shall have [three (3)] two (2) classifications of blasting licenses and [three (3)] two (2) tests; [one (1) termed "Class A Kentucky Blasters License,"] one (1) termed "Kentucky Blasters License," and one (1) termed "Limited Kentucky Blasters License."

(4) Persons holding a limited Kentucky blasters license shall not conduct a blasting operation in which more than five (5) pounds of explosives are used in a single charge.

[(5) Applicants for a Class A Kentucky blasters license shall:]

[(a) Have held a Kentucky blasters license for at least two (2) years, and;]

[(b) Be tested on explosives and blasting regulations, blasting skills techniques, and engineering skills.]

[(6)] (5) Each blaster shall be required to renew his license each year by application to the department, which application shall be accompanied by a fee of five dollars (\$5). The commissioner may suspend any license for due cause but no license may be revoked until the licensee has been granted a hearing.

(6) [(7)] The commissioner may grant a thirty (30) day non-renewable blaster's license to any person qualified under KRS 351.315(3) upon the payment of a five dollar (\$5) fee.

(7) [(8)] [(6)] The definitions of a blaster for the purpose of a license is:

(a) A blaster is a person who makes any or all of the following decisions:

1. Decides hole size, spacing, or depth;
2. Decides total quantity of explosives;
3. Decides quantity of explosives in each hole;
4. Decides timing delays to be used.

(b) He must be present when the charge is detonated and either physically detonates the charge or gives the order to detonate the charge.

(8) [(9)] [(7)] A licensed blaster shall not take any instruction on the activities covered in subsection (7) [(8)] [(6)] from a person not holding a blaster's license *if compliance with such instruction will result in an unlawful act or unlawful effect of the blast.*

(9) [(10)] [(8)] Anyone failing a blaster's examination may not retake the examination in less than thirty (30) days.

H. N. KIRKPATRICK

ADOPTED: April 26, 1978

APPROVED:

JAMES E. GRAY, Secretary

RECEIVED BY LRC: April 27, 1978 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
As Amended

805 KAR 4:075. General blasting provisions.

RELATES TO: KRS 351.350, 351.990

PURSUANT TO: KRS 13.082, 351.335

NECESSITY AND FUNCTION: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This regulation effects the provisions of that law.

Section 1. General Blasting Provisions. (1) The employer shall permit only authorized and qualified persons to handle and use explosives.

(2) Smoking, firearms, matches, open flame lamps, and other fires, flame, or heat producing devices and sparks shall be prohibited in or near explosive magazines or while explosives are being handled, transported, or used.

(3) No person shall be allowed to handle or use explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs.

(4) All explosives shall be accounted for at all times. Explosives not being used shall be kept in a locked magazine, unavailable to persons not authorized to handle them. The employer shall maintain an inventory and use record of all explosives. Appropriate authorities shall be notified of any loss, theft, or unauthorized entry into a magazine.

(5) No explosives or blasting agents shall be abandoned.

(6) No fire shall be fought where the fire is in imminent danger of contact with explosives. All employees shall be removed to a safe area and the fire area guarded against intruders.

(7) Original containers or Class II magazines, shall be used for taking detonators and other explosives from storage magazines to the blasting area.

(8) When blasting is done in congested areas or in proximity to a structure, railway, or highway, or any other installation that may be damaged, the blaster shall take

special precautions in the loading, delaying, initiation, and confinement of each blast with mats or other methods so as to control the throw of fragments, and thus prevent bodily injury to employees.

(9) Employees authorized to prepare explosive charges or conduct blasting operations shall use every reasonable precaution including, but not limited to, visual and audible warning signals, flags, or barricades, to ensure employee safety.

(10) In so far as possible, blasting operations above ground shall be conducted between sunup and sundown.

(11) Due precautions shall be taken to prevent accidental discharge of electric blasting caps or explosives from current induced by radar, radio transmitters, lightning, adjacent power lines, dust storms, or other sources of extraneous electricity. These precautions shall include:

(a) Detonators shall be short-circuited in holes which have been primed and shunted until wired into the blasting circuit.

(b) The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electric storm.

(c) The prominent display of adequate signs, warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to the 1000-foot distance would create an operational handicap, this distance may be modified *so long as the modification is adequately designed in compliance with 805 KAR 4:075(11)(e) to prevent any premature firing of electric blasting caps.* Specimens of signs which would meet these requirements are as follows:

"Blasting Zone 1000 feet" (about 48" X 48");
"Turn off Two-way Radio (about 42" X 36"). Paragraph (c) shall not apply to surface mining operations.

(d) *Mobile radio transmitters which are less than 100 feet away from electric blasting caps in other than original containers, may be left "on" for receiving purposes but may only be used to transmit if in compliance with paragraph (e) of this subsection.*

(e) [(d)] Compliance with the recommendations of The Institute of Makers of Explosives with regard to blasting in the vicinity of radio transmitters as stipulated in Radio Frequency Energy—A Potential Hazard in the use of Electric Blasting Caps, IME Publication No. 20, March 1971.

(12) Empty boxes and paper and fiber packing materials, which have previously contained high explosives, shall not be used again for any purpose, but shall be destroyed by burning at an approved location.

(13) Explosives, blasting agents, and blasting supplies that are obviously deteriorated or damaged shall not be used.

(14) Delivery and issue of explosives shall only be made by and to authorized persons and into authorized magazines or approved temporary storage or handling areas.

(15) Blasting operations in the proximity of overhead powerlines, communication lines, utility services, or other services or structures shall not be carried on until the operators and/or owners have been notified and measures for safe control have been taken.

(16) The use of black powder shall be prohibited, except when a desired result cannot be obtained with another type of explosive such as in quarrying certain types of dimension stone.

(17) All loading and firing shall be directed and supervised by competent persons thoroughly experienced in this field.

(18) All electric blasts shall be fired with an electric

blasting machine or properly designed electric power source, and in accordance with the provisions of 805 KAR 4:110(1) and (18).

(19) No one shall be permitted to carry detonators or primers of any kind on his person; provided, however, that it shall not be unlawful to carry detonators or primers in one's hands.

H. N. KIRKPATRICK, Commissioner

ADOPTED: April 19, 1978

APPROVED: JAMES E. GRAY, Secretary

RECEIVED BY LRC: April 27, 1978 at 11 a.m.

Proposed Amendments

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 5:010. Authority, purpose, name of grant programs.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

PURSUANT TO: KRS 13.082, 164.748(4) [(3)]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky *educational* [post-secondary] institutions. This regulation sets forth the purpose and names of these grant programs.

Section 1. The State Student Incentive Grant Program (SSIG) authorized under KRS 164.740 to 164.764 provides eligible Kentucky residents grant assistance in order to pursue *eligible courses of study* [post-secondary educational programs] at Kentucky *educational* [eligible Kentucky] institutions.

Section 2. The Kentucky Tuition Grant Program (KTG) authorized under KRS 164.780 and 164.785 provides qualified Kentucky residents who bear the major costs of attending accredited independent colleges and universities within the Commonwealth a tuition or fees grant as supplementary aid [to students] where need exists.

Section 3. Awards from the State Student Incentive Grant Program, [or] the Kentucky Tuition Grant Program, or a combination of the two (2) may be referred to as KHEAA grants.

PAUL P. BORDEN, Executive Director

ADOPTED: April 20, 1978

RECEIVED BY LRC: May 10, 1978 at 10:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Paul P. Borden, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 5:020. Definitions.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

PURSUANT TO: KRS 13.082, 164.748(4) [(3)]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky *educational* [post-secondary] institutions. This regulation sets forth the definitions of acronyms, words and phrases used in the administration of KHEAA grant programs.

Section 1. Definitions. (1) "Academic year" means [is] a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, [or] three (3) quarters, or 900 clock hours of instruction.

[(2) "Agreement" is the document titled "Certifications and Declarations to Participate in the Kentucky Higher Education Assistance Authority Grant Programs" executed by the educational institution and the "Authority Declaration of Eligibility to Participate in the Kentucky Higher Education Assistance Authority Grant Programs" executed by the authority.]

(2) [(3)] "Application" means Kentucky Financial Aid Form, a copy of which is herein filed by reference. This form is available from Kentucky Higher Education Assistance Authority, Frankfort, Kentucky 40601.

(3) [(4)] "Authority" means [is] the Board of Directors of the Kentucky Higher Education Assistance Authority.

(4) [(5)] "Basic Grant" means [is] an award under the Basic Educational Opportunity Grant Program operated by the United States Government under the provision of PL Number 94-482 [92-315].

(5) [(6)] "Business school" means a proprietary institution of higher education incorporated in Kentucky which:

(a) Admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate;

(b) Is legally authorized by the State Board for Proprietary Education under the provisions of KRS 165A.310 to 165A.370 [165A.990] to provide a program of education beyond secondary education;

(c) Pursuant to KRS 164.740(3) [(6)] is accredited by the Association of Independent Colleges and Schools, Accreditation Commission, which is the successor to the Commission for Business Schools;

(d) Is not a public or other nonprofit institution; and

(e) Has been in existence for at least two (2) years.

(6) [(7)] "Clock hour" means [is] a period of time which is the equivalent of a fifty (50) to sixty (60) minute class, lecture or recitation, or a fifty (50) to sixty (60) minute period of faculty-supervised laboratory, shop training, or internship.

(7) [(8)] "Degree" means the earned academic title or designation, mark, appellation or series of letters or words which signify satisfactory completion of the requirements of an educational program of undergraduate study beyond the secondary school level and which leads to an associate or bachelor's degree [.] at the institution at which the student is enrolled.

(8) [9] "Dependent student" means [is] a KHEAA grant applicant who answers yes for any of the years specified on the application to any questions relating to living with parents more than the specified number of weeks each year, listing as a tax exemption on the parents' United States income tax return, or [and] receipt of financial assistance from parents.

(9) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(10) "Eligible course of study" means [is] a program offered by an educational [eligible] institution which:

(a) Is of at least two (2) academic years duration; and

(b) Leads to a degree in a field other than theology, divinity, or religious education [.] at the institution at which the student is enrolled.

(11) "Educational [Eligible] institution" means [is] an institution located in Kentucky which offers an eligible course of study which is not comprised solely of sectarian instruction, and which has entered into an agreement with the authority and is:

(a) An accredited public or other nonprofit college, university, school of nursing or vocational school which enrolls as regular students only those persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate; or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and who have the ability to benefit from the training offered by the institution; [or]

(b) A business school; [.] or

(c) A vocational technical school accredited by the National Association of Trade and Technical Schools which enrolls as regular students only those persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate.

(12) "Executive director" means [is] the chief administrative officer appointed by the authority.

(13) "Full-time student" means [is] a student who is carrying a full-time academic work load, other than by correspondence, measured in terms of:

(a) Course work or other required activities as determined by the institution in which the student is enrolled, including any combination of courses, work experience, research or special studies which the institution requires of the student to consider him as being engaged in full-time study, and which amounts to the equivalent of a minimum

of twelve (12) semester hours or twelve (12) quarter hours per academic term for institutions utilizing trimesters, semesters or quarter hour systems or which consists of a program requiring the minimum of twenty-five (25) clock hours per week for those institutions that do not utilize such systems; and

(b) The tuition and fees customary for full-time study at that institution.

(14) "Independent student" means [is] a KHEAA grant applicant who answers no to all questions relating to living with parents more than the specified number of weeks each year, listing as a tax exemption on parents' United States income tax return and receipt of financial assistance from parents.

(15) "KHEAA grant program officer (KGP0)" means [is] the [full-time administrative] official designated on the contract, pursuant to KRS 164.748(5), [agreement by a participating institution] to serve as the authority's on-campus agent to certify all institutional transactions and activities with respect to the KHEAA grant programs.

(16) "Over-award" means provision through any and all sources of [more] financial assistance to meet educational expenses [than is needed by a student.] in excess of a student's need.

(17) "Parental contribution (PC)" means [is] the amount the parents or others in loco parentis of a dependent student can reasonably be expected to contribute toward meeting the student's educational expenses [cost]. PC is determined for KHEAA grant programs by application of the uniform methodology of need analysis assessment to the data entered on the application.

(18) "Resident of Kentucky" means [is] a person who is classified as an in-state student in accordance with the "Policy on Classification of Students for Fee Assessment Purposes at State-Supported Institutions of Higher Education" as adopted and from time to time amended by the Council on [Public] Higher Education.

(19) "Student contribution (SC)" means [is] the amount the student and/or spouse can reasonably be expected to contribute toward meeting the applicant's educational expenses [cost]. The SC is determined for KHEAA grant programs by application of the uniform methodology of need analysis assessment to the data entered on the application.

(20) "Student eligibility index (SEI)" means [is] the expected family contribution computed by the United States Office of Education or its contractor from the data on the application for a basic grant.

(21) "Total cost of education (TCE)" for an academic year means [is] an amount determined for each applicant by the following formula: normal tuition and fees for a full-time student at the institution chosen by the applicant plus maximum board contract amount plus minimum room contract amount. [For a one (1) semester applicant, one-half (½) of the TCE shall be used.] For institutions which do not have room and board charges, a maintenance allowance of \$900 for the year or \$450 for a semester or such other allowances as may be agreed to between the authority and any educational [eligible] institution will be allowed.

PAUL P. BORDEN, Executive Director

ADOPTED: April 20, 1978

RECEIVED BY LRC: May 10, 1978 at 10:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Paul P. Borden, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:030. Student eligibility requirements.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

PURSUANT TO: KRS 13.082, 164.748(4) [(3)]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky *educational* [post-secondary] institutions. This regulation sets forth eligibility requirements for KHEAA grant programs.

Section 1. Eligibility of students. In order to qualify for a KHEAA grant, a student shall:

(1) Be a resident of the Commonwealth of Kentucky;
(2) Be enrolled as a full-time student in an eligible course of study;

(3) *Be enrolled in an undergraduate program and not have previously earned a first baccalaureate or professional degree at any institution;*

(4) [(3)] Have established financial need for the grant program assistance pursuant to 11 KAR 5:050 and 11 KAR 5:060;

(5) [(4)] Have remaining eligibility. A student enrolled in a *two-year institution* [an associate degree program] shall be limited to four (4) semesters or six (6) quarters of grant eligibility. A student enrolled in a *four-year institution* [bachelor's degree program] shall be limited to eight (8) semesters or twelve (12) quarters of grant program eligibility. An exception may be granted if the bachelor's program leads to a first degree and is designed to be completed in a ten (10) semester period, in which case the eligibility may be extended for cause by the executive director to ten (10) semesters. A student enrolled in an *eligible course of study* [program] of a duration not otherwise covered by this regulation shall have the same number of semesters or quarters of grant program eligibility as are normally required for a student to complete that *eligible course of study* [program];

(6) [(5)] Not receive financial assistance *to meet educational expenses* in excess of [financial] need;

(7) [(6)] Maintain satisfactory progress in an eligible course of study according to the *published* standards and practices of the *educational* institution at which the student is enrolled; and

(8) [(7)] Satisfy all financial obligations to the authority and to any *educational* [eligible] institution. Ineligibility under this subsection may be waived for cause by the executive director.

PAUL P. BORDEN, Executive Director

ADOPTED: April 20, 1978

RECEIVED BY LRC: May 10, 1978 at 10:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Paul P. Borden, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:050. Student application.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

PURSUANT TO: KRS 13.082, 164.748(4) [(3)]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky *educational* [post-secondary] institutions. This regulation prescribes the form to be used by students to apply for and establish financial need for KHEAA grant programs.

Section 1. The application shall be completed and submitted in accordance with the instructions provided by the authority. The application and *instructions* [instructional folder] herein filed by reference are available from the [Kentucky Higher Education Assistance Authority, Frankfort, Kentucky 40601] authority.

Section 2. An applicant must indicate the choice of an *educational* [eligible] institution on the application to be considered for the KHEAA grant. *If the student provides written notification of change of first choice educational institution, [If that choice changes]* grant program eligibility shall be redetermined and award determination shall be recomputed by the authority. [as of the date of receipt by the authority of notification of such change.]

PAUL P. BORDEN, Executive Director

ADOPTED: April 20, 1978

RECEIVED BY LRC: May 10, 1978 at 10:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Paul P. Borden, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:060. Award determination procedure.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

PURSUANT TO: KRS 13.082, 164.748(4) [(3)]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky *educational* [post-secondary] institutions. This regulation sets forth the award determination procedures for the KHEAA grant programs.

Section 1. State Student Incentive Grant Program eligibility. Each application shall be reviewed for determination that all eligibility requirements set forth in 11 KAR 5:030 for SSIG are met. If the applicant is eligible for

SSIG consideration, the amount of award eligibility shall be determined by reference to the SSIG award determination table for the appropriate academic year or portion thereof. Awards shall be assigned for dependent students in order of ascending expected parental contribution and for independent students in order of ascending expected student and/or spouse contribution, with applicants having the least expected contribution receiving awards first. SSIG awards shall be offered to the extent that funds are available.

Section 2. Kentucky Tuition Grant Program eligibility. Whether or not the applicant is eligible for a SSIG award, the application shall be reviewed for determination of eligibility for a Kentucky Tuition Grant Award.

Section 3. KTG Need. (1) For each KTG eligible applicant, the KTG need shall be computed according to the following formula: KTG need equals total cost of education minus the sum of:

- (a) Expected basic grant;
 - (b) Expected parental contribution for dependent applicants or expected student and/or spouse contribution for independent applicants; and
 - (c) SSIG.
- (2) Need for one (1) semester shall be determined by dividing by two (2) the results of this formula.

Section 4. KTG Award. (1) If an applicant has not received a SSIG award but the KTG need is an amount equal to or greater than \$200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3) provided that KTG awards shall be offered only to the extent funds are available.

(2) If an applicant has received a SSIG award and the KTG need is an amount equal to or greater than fifty dollars (\$50), the KTG award shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3) provided that KTG awards shall be offered only to the extent that funds are available.

Section 5. Minimum Award Amount. The minimum KHEAA grant awarded to any recipient for a given academic year shall be \$200. Minimum award for a one (1) semester grant shall be \$100.

Section 6. SSIG and/or KTG shall be awarded as a KHEAA grant.

Section 7. A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award. A semester award shall not exceed tuition and fee charges for that semester.

Section 8. The authority may reduce or revoke a KHEAA grant upon receipt of documentation that the total non-repayable gift assistance from other state funds in combination with the KHEAA grant exceeds the student's total cost of education.

Section 9. The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from sources other than the authority in combination with the KHEAA grant exceeds the institution's financial need determination for that student. The KGPO and the award recipient shall make every

reasonable effort to provide the authority the information needed to prevent an overaward.

PAUL P. BORDEN, Executive Director

ADOPTED: April 20, 1978

RECEIVED BY LRC: May 10, 1978 at 10:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Paul P. Borden, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 5:070. Notification of award.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

PURSUANT TO: KRS 13.082, 164.748(4) [(3)]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky *educational* [post-secondary] institutions. This regulation sets forth the procedures for notification to applicants [of grant awards to recipients] and to *educational* [eligible] institutions.

Section 1. [The authority will notify each applicant of the decision of the authority regarding eligibility for a grant.]

[(1)] The authority will notify each KHEAA grant recipient of the amount of award together with disbursement information. The recipient must notify the authority of any incorrect information appearing on the notice, including name, address, Social Security number or institutional choice errors or changes.

Section 2. [(2)] So long as funds are available the authority will individually notify Kentucky applicants of the reason for their denial. When funds are no longer available public, rather than individual, notification shall be given.

Section 3. [2.] Periodically the authority will [may] forward to the KGPO at each *educational* [eligible] institution a *report listing* [roster of] student *applicants* [recipients] indicating that institution as the one *in which* [where] they plan to enroll.

PAUL P. BORDEN, Executive Director

ADOPTED: April 20, 1978

RECEIVED BY LRC: May 10, 1978 at 10:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Paul P. Borden, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:080. Disbursement procedures.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

PURSUANT TO: KRS 13.082, 164.748(4) [(3)]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky *educational* [post-secondary] institutions. This regulation sets forth the disbursement procedures for KHEAA grant programs.

Section 1. Eligibility verification. (1) The KHEAA grant program eligibility verification roster will be forwarded to the KGPO at each *educational* [eligible] institution prior to the beginning of each semester.

(2) The KGPO shall certify the eligibility of KHEAA grant recipients according to instructions attached to the roster and return it to the authority [KHEAA] at least three (3) weeks prior to the date on which receipt of the KHEAA grant checks is requested.

Section 2. Checks, Check Register. (1) Upon receipt of the properly certified eligibility verification roster, the authority will issue to the KGPO individual checks made payable to each award recipient.

(2) The checks will be accompanied by two (2) copies of a KHEAA grant check register, one (1) copy of which shall be retained by the institution and the other returned to the authority in accordance with instructions attached thereto. The instructions will specify:

(a) Conditions under which a check shall be disbursed to the KHEAA grant recipient;

(b) That each recipient shall sign the check register indicating receipt of the check;

(c) Conditions under which a check shall be returned to the authority; and

(d) The date on which the register and any undisbursed checks shall be returned to the authority.

(3) An institution which has not returned a previous check register or completed it according to instructions may not receive another check register and additional checks until it has satisfied the requirements in Section 2(2) above.

PAUL P. BORDEN, Executive Director

ADOPTED: April 20, 1978

RECEIVED BY LRC: May 10, 1978 at 10:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Paul P. Borden, Kentucky Higher Education
Assistance Authority, 691 Teton Trail, Frankfort, Ken-
tucky 40601.

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:085. Requirement of basic grant application.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

PURSUANT TO: KRS 13.082, 164.748(4) [(3)]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky *educational* [post-secondary] institutions. This regulation provides for cancellation of undisbursed portions of KHEAA grants to students who are potentially eligible for, but who do not apply for, a basic grant.

Section 1. A KHEAA grant recipient who, on the basis of information submitted on the KHEAA grant application, is potentially eligible for a basic grant must apply for the basic grant prior to disbursement of the spring semester portion of the KHEAA grant. Recipients subject to this regulation will be notified by the authority in advance of *cancellation* of [any action by the authority to cancel] the undisbursed portion of the KHEAA grant. If within a reasonable time following such notification the student fails to *provide documentation of filing a basic grant application* [apply for a basic grant] the undisbursed portion of the KHEAA grant shall be cancelled.

PAUL P. BORDEN, Executive Director

ADOPTED: April 20, 1978

RECEIVED BY LRC: May 10, 1978 at 10:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Paul P. Borden, Kentucky Higher Education
Assistance Authority, 691 Teton Trail, Frankfort, Ken-
tucky 40601.

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 5:100. Records and reports.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

PURSUANT TO: KRS 13.082, 164.748(4) [(3)]

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky *educational* [post-secondary] institutions. This regulation requires that *educational* [eligible] institutions provide records and reports to the authority.

Section 1. Records and reports. Any *educational* [eligible] institution shall, upon written request, [by the authority,] make available to the authority:

(1) All records relied upon by that institution to certify [to the authority] that any recipient of funds from the authority is an eligible student pursuing an eligible course of study. Any institution which requires a student to ex-

ecute a contract providing for payment of tuition and fees shall include on the face of that contract:

- (a) Date the student signed the contract;
- (b) Date student began or will begin classes;
- (c) Expected graduation date;
- (d) Major field of study;
- (e) Minor field of study; [and]
- (f) Full or part-time enrollment status; and [.]
- (g) All degrees previously earned.

A copy of the contract for the academic period for which the KHEAA grant is awarded for each applicant certified as eligible shall be submitted with the Eligibility Verification Roster.

(2) Such other reports and information as are necessary to determine that the institution has complied with these regulations and with the certifications and declarations contained in the contract [agreement].

Section 2. 11 KAR 5:040 is hereby repealed.

PAUL P. BORDEN, Executive Director

ADOPTED: April 20, 1978

RECEIVED BY LRC: May 10, 1978 at 10:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Paul P. Borden, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

**EXECUTIVE DEPARTMENT FOR
FINANCE AND ADMINISTRATION**
Division of Occupations and Professions
Kentucky Real Estate Commission
(Proposed Amendment)

201 KAR 11:005. Application for license.

RELATES TO: KRS 324.045

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: *Improve and clarify administrative procedure for Commission and applicants for the real estate examinations. [To inform and set certain standards for the licensees and to protect the public.]*

Section 1. Each applicant for a real estate broker's or salesman's license shall file with his application, [license fee,] a twenty-five dollar (\$25) examination fee by a certified check or postal money order (non-refundable) [and real estate education, research, and recovery fund fee] with the Commission at least forty-five (45) days prior to the date of the next scheduled written examination.

Section 2. *To be issued a license, passing applicants shall, within fifteen (15) days of release of test scores by the testing center, deliver or mail to the commission offices, ten dollar (\$10) license fee and thirty dollar (\$30) real estate education, research, and recovery fund fee, in the form of a certified check or postal money order. Passing broker applicants, presently licensed as salespersons in Kentucky, submit only ten dollar (\$10) certified check or postal money order for license fee.*

Section 3. Any applicant who fails to comply with the

provisions of Section 2 herein will not be issued a license and shall be subject to discretionary review by the commission.

JOHN A. CELLETTI, Chairman

ADOPTED: April 27, 1978

APPROVED: RUSSELL McCLURE, Secretary

RECEIVED BY LRC: May 4, 1978 at 9 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: General Counsel, Kentucky Real Estate Commission, 100 East Liberty Street, Suite 204, Louisville, Kentucky 40202.

DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:105. Deer gun and archery season; restrictions.

RELATES TO: KRS 150.025, 150.170, 150.176, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390, 150.400

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: This regulation pertains to the statewide deer gun season, the deer gun and archery season on specified wildlife management areas and refuges and the turkey archery season on Land Between the Lakes. This regulation is necessary for the continued protection of the species listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of deer and turkey within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates, and open and close additional counties and game management areas to deer hunting.

Section 1. Statewide Deer Gun Season, Limits and Hunting Hours for White-tailed Deer Only.

(1) Season. Opens on November 11 [12] and continues through November 13 [14, 1977]. Opens on December 2 [3] and continues through December 4 [5, 1977] in selected counties.

(2) Zones and legal deer [which may be taken]:

(a) Zone No. 1: McCracken, Livingston, Crittenden and Ballard Counties. Bucks only with at least one (1) forked antler during November 11 [12] through November 13 [14, 1978], and December 3 [4] and 4 [5, 1978]. Either sex deer on December 2 [3] only.

(b) Zone No. 2: All of Edmonson County and only that portion of Hart County west of I-65 and south of Highway 88, and Barren County west of I-65 are open to either sex deer during November 11 through November 13 and December 2 through December 4. The remainder of Hart and Barren Counties is open to bucks only with at least one (1) forked antler on the above dates. [Barren, Hart and Edmonson Counties. Bucks only with at least one (1) forked antler during November 12 through November 14, 1977 and December 4 and 5, 1977. Either sex deer on December 3 only.]

(c) Zone No. 3: *Adair, Bell, Bourbon, Breathitt (except that portion south of Buckhorn Creek Road which is closed to deer hunting), Fayette, Garrard, Greenup, Hardin, Jefferson, Jessamine, Kenton, Knox, Laurel, Letcher, Lincoln, Madison, Mercer, Metcalfe, Montgomery, Morgan, Pike, Rockcastle, Whitley and Woodford Counties are open to bucks only with at least one (1) forked antler during November 11 through November 13. [Gallatin and Owen Counties. Bucks only with at least one (1) forked antler during November 12 through November 14, 1977, and December 4 and 5, 1977. Either sex deer on December 3 only.]*

(d) Zone No. 4: Remainder of state except those counties closed to deer hunting; those management areas which are closed to all hunting; and those management areas where the deer hunting [season] dates vary from the statewide hunting dates. Bucks only with at least one (1) forked antler, November 11 [12] through November 13 [14, 1977], and December 2 [3] through December 4 [5, 1977].

(e) All Zones: Limit is one (1) white-tailed deer per season per hunter, either by gun or archery, except as stated herein on Fort Campbell Wildlife Management Area, Land Between the Lakes Wildlife Management Area and Ballard Wildlife Management Area.

(3) Hunting Hours. One-half (½) hour before sunrise to one-half (½) hour after sunset prevailing local time for gun or archery.

Section 2. This section pertains to counties closed to both gun and archery deer hunting; areas open to small game hunting and trapping during the statewide gun deer hunting season; wildlife areas closed to all hunting:

(1) The following counties are closed to both gun and archery deer hunting: Jackson, Owsley, Clay, Powell, Harlan, Leslie, Wolfe, Clark, Johnson, Perry, Knott, Martin, Floyd, [and] Magoffin and Estill and that portion of Breathitt County south of Buckhorn Creek Road.

(2) The following wildlife management areas are closed to all hunting: Grayson Wildlife Management Area in Carter and Elkhart Counties, Beaver Creek Wildlife Management Area, including all private inholdings, in Pulaski and McCreary Counties, [Pine Mountain Wildlife Management Area in Letcher County,] Robinson Forest Wildlife Management Area in Breathitt, Perry and Knott Counties, Redbird Wildlife Management Area, including all private inholdings, in Leslie and Clay Counties, [and] Dewey Lake Wildlife Management Area in Floyd County and Cane Creek Wildlife Management Area, including all private inholdings, in Laurel County.

(3) Yellowbank Wildlife Management Area located in Breckinridge County is closed only for deer hunting.

Section 3. License Requirements for Gun and Archery Deer Hunting. Each hunter taking or attempting to take deer must have in his or her possession a valid deer hunting permit, unless exempted by KRS 150.170(3), (5) or (6) (the resident owner of farmlands, his wife or dependent children; resident tenants or their dependent children residing upon said farmlands; residents sixty-five (65) years or older; and resident servicemen on furlough of more than three (3) days in their county of legal residence). All persons except those exempted by KRS 150.170(3), (5) or (6), must have a valid Kentucky hunting license in addition to the deer hunting permit. All non-residents are required to possess an annual non-resident hunting license and a deer permit.

Section 4. Mandatory Deer Check Stations: (1) All deer [gun] hunters harvesting a deer during any statewide deer hunting [the November 12 through November 14, 1977 and December 3 through December 5, 1977,] season, must have it checked at a check station nearest to where the deer was harvested, or by the nearest available conservation officer, no later than 9:00 a.m. the next day. This also applies to the last day's hunt during all [both] hunting periods. The hunter must fill out the stub attached to the [his] deer permit, and this stub will be detached by the check station operator or conservation officer. Any person possessing a deer and an unsigned or unstamped deer permit is in violation of this regulation. A list of statewide check stations is attached to each deer permit [may be obtained from any county clerk's office].

(2) Hunters harvesting a deer on military posts, Land Between the Lakes or state-owned wildlife management areas listed in this regulation, must conform to check station requirements on those areas.

[(3) Persons eligible to hunt without a hunting license or deer permit (see Section 3 of this regulation) must contact their nearest conservation officer for a free tag whenever they kill a deer.]

Section 5. General Requirements for Gun and Archery Hunting. (1) Deer hunting is prohibited within the [exterior] boundaries of Mammoth Cave National Park.

(2) Tagging deer carcass, hide and head.

(a) Deer Carcass: Any [Each] hunter harvesting [who harvests] a deer must immediately attach to the deer the [adhesive paper] tag provided with the deer permit. The tag should [may] be attached through a slit cut in the hock of a hind leg in such a manner [to any portion of the deer, provided] that it cannot be removed without mutilating the deer carcass or damaging or destroying the [adhesive paper] tag. The tag must remain attached to the deer until the carcass is processed and packaged by locker plant, butcher or hunter. The card portion of the deer permit must be separated from the [adhesive paper] tag when tagging the deer and retained in possession of hunter [licensee]. All persons eligible to hunt without a hunting license or deer [hunting] permit (see Section 3 of this regulation) [as exempted by KRS 150.170(3), (5) or (6), must attach to the deer a free identification tag obtained from a conservation officer before removing said deer from their land or other lands] should contact the nearest conservation officer before hunting deer to obtain a free deer tag. This tag should be attached to the deer carcass before it is removed from the land where it was harvested.

(b) [(3)] Deer hide: The deer hide tag [attached to the deer permit] must be attached to the [raw] hide immediately after removal from the carcass. Deer hides lawfully [legally] taken and tagged may be possessed, [and] processed, traded, [but cannot be] bought or sold.

(c) Taxidermist tags: Deer parts separated from the body for mounting by a taxidermist, must have the tag attached.

(3) [(4)] Hunters harvesting a deer must leave the head attached to the body until the carcass is removed from the field and processed by a locker plant, butcher or hunter.

(4) Tree stands. On state-owned wildlife management areas and the Daniel Boone National Forest, the use of any nails, spikes, screw-in devices, wire or tree climbers are prohibited for attaching tree stands or for climbing trees. Only portable tree stands and climbing devices that do not injure trees may be used. Portable stands may be placed in trees no more than two weeks before opening day of each hunting period, and must be removed within one week

following the last day of each hunting period. All portable tree stands must be marked with the owner's name and address. Existing permanent tree stands may be used through the 1979 deer hunting season, but cannot be repaired or maintained.

(5) *Residents* [Non-residents] of states [state] which do [does] not grant residents of Kentucky the same hunting privilege as provided by KRS 150.176, may not hunt deer in Kentucky.

(6) Deer may not be taken with the aid of dogs.

(7) Deer may not be taken with the use of boats, any type of land vehicle or any domestic animal.

(8) Deer may not be taken at any time or place while the deer is in the act of swimming or in any stream or body of water where the deer's body is submerged except for neck and head.

Section 6. General Statewide Gun Season Requirements. Unless listed here or under specified wildlife management areas, all other firearms are prohibited.

(1) Permitted Weapons:

(a) Shotgun ten (10) gauge maximum and twenty (20) gauge minimum with shells carrying a single slug.

(b) Center fire rifles .240 caliber or larger.

(c) Muzzle-loading rifles of .38 caliber or larger fired from the shoulder.

(d) Semi-automatic rifles (trigger has to be pulled each time the rifle fires).

(e) Handguns with barrel lengths of 3.90 inches or longer. Only the following cartridges may be used: .30 Herret; .357 magnum; .357 Herret; .357 auto mag.; .41 magnum; .41 auto mag.; .44 magnum; .44 auto mag.; 44/40; .45 colt long; .45 auto mag.; and .45 ACP; the last of which must use either semi-jacketed hollow points or semi-jacketed soft point bullets. No full metal jacketed bullets of any caliber may be used.

(2) Prohibited Weapons and Conditions:

(a) Persons under eighteen (18) years of age may not hunt deer unless accompanied by an adult.

(b) No one may hunt deer with a gun unless wearing a visible vest, or coat, or coveralls, or cap or hat of hunter orange color. The entire vest, coat, coveralls, cap or hat must of the hunter orange color. Any one of these items may be worn to comply with this regulation.

(c) Buckshot or any type of shot shells are prohibited except on the Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties.

(d) Fully automatic rifles (when holding down the trigger will fire all remaining shells in the rifle).

(e) Full jacketed (military type) ammunition.

(f) Tracer bullet ammunition.

(g) Any Army issue M-1 .30 caliber carbine or its equivalent commercially sold counterpart. Any .256 caliber rifle.

(h) Muzzle-loading shotgun, except on Pioneer Weapons Wildlife Management Area and a portion of the Land Between the Lakes Wildlife Management Area.

(i) Crossbow [and longbows.], *longbow and compound bow*.

Section 7. Archery Seasons [Season] and Requirements on Wildlife Management Areas. Seasons and equipment. Unless specified otherwise in Section 8 of this regulation, all archery season dates and archery equipment including crossbows shall correspond to statewide requirements as set forth in the archery regulation.

[(1)] Permitted weapons:]

[(a)] Longbows and compound bows.]

[(b)] Barbless arrows with broad head points at least seven-eighths (7/8) inch wide.]

[(c)] Crossbows on Pioneer Weapons Wildlife Management Area only in Bath and Menifee Counties. Crossbows must be of not less than eighty (80) pounds pull with barbless arrows with broad head points at least seven-eighths (7/8) inch wide.]

[(2)] Prohibited weapons and conditions:]

[(a)] Any type of firearms.]

[(b)] Crossbows, except as stated under permitted weapons.]

[(c)] Chemically treated arrows, or attachments containing chemicals.]

Section 8. Exceptions to Statewide Deer Hunting Regulations on the Following Wildlife Management Areas and Refuges.

(1) West Kentucky Wildlife Management Area located in McCracken County:

(a) Deer Archery (either sex): October 15 [1] through October 31 [, 1977] on Tracts 1, 2, 3, 4, 5 and 6. December 1 [10] through December 31 [, 1977] on Tracts 4, 5 and 6.

(b) Deer Gun (either sex): November 3 [8] and 4 [9, 1977] on Tracts 1, 2, 3, 4, 5 and 6. Limited to hunters possessing a Kentucky hunting license whose last digit ends in 1, 2, 3, 4 and 5 [an odd number]. November 17 [19] and 18 [20, 1977] on Tracts 1, 2, 3, 4, 5 and 6. Limited to hunters possessing a Kentucky hunting license number whose last digit ends in 0, 6, 7, 8 and 9 [zero (0) or an even number]. *Kentucky residents* [Persons] sixty-five (65) or more years old, possessing a lifetime hunting license may hunt during either [any one (1)] of the two (2) weekends.

(c) Checking in and out: All hunters must check in and out at the designated check station.

(d) Permitted and Prohibited Guns: No rifles or sidearms permitted. Only shotguns twenty (20) gauge to ten (10) gauge with slug ammunition may be used for taking deer.

(e) Permitted and Prohibited Archery Weapons: Refer to Section 7 [(1) and (2)] of this regulation.

(f) Closed Areas: All tracts designated by a number followed by the letter "A" are closed to hunting.

(2) Land Between the Lakes Wildlife Management Area located in Trigg and Lyon Counties:

(a) Deer Archery (either sex): White-tailed deer only. October 7 [8] through November 12 [2, 1977]. December 9 [10] through December 31 [1977].

(b) Quota Deer Hunts:

1. Quota Gun Hunts: White-tailed deer only. Bucks with at least one (1) forked antler. Some areas either sex as specified on permit. November 13, 15-16, 18-19, 21-22, 25-26, and 28-29.

2. Quota Archery Hunts: White-tailed and fallow deer of either sex in that portion of the Environmental Education Center designated as hunt areas 17 and 18. November 13, 15-16, 18-19, 21-22, 25-26, and 28-29.

[(b)] Deer Gun: White-tailed deer only. Bucks with at least one (1) forked antler. Some areas either sex or antlerless only. November 7, 11, 16 and 19, 1977.]

(c) Turkey Archery: Gobblers only with visible beards. One (1) per hunter. October 7 [8] through November 12 [2, 1977]. December 9 [10] through December 31 [1977].

(d) Deer Gun Hunt (for youths only): November 25-26 [5, 1977]. Designated hunt areas will be restricted to only those youths who will be at least ten (10) years of age, but who will not have reached sixteen (16) years of age on the day of the hunt [will be allowed]. Each youth [Youths] must be accompanied by an adult and the youth must have

boundary lines (not the property boundary lines).

(4) No "on-premise" advertising device advertising a commercial or industrial activity as set forth in Section 2, subsection (16) of this regulation, shall be located more than 400 feet, measured within the property boundary, from the advertised activity. In using a corridor to reach the location of the device, the corridor must be no less than 100 feet in width and must be an integral part of the property on which the advertised activity is located. No other activity which is in any manner foreign to the advertised activity may be located on or have use of said corridor between the advertised activity and the location of the device. No activity incidental to the primary activity advertised will be considered in taking measurements.

(5) Only one (1) "on-premise" advertising device which is listed as an exception in Section 2, subsection (16), may be located in such a manner that it is legible from the main traveled way.

(6) Only one (1) of the the following "on-premise" advertising devices may be located in such a manner that it is legible from the main traveled way.

(a) The setting forth or indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located; or

(b) The name or type of business or profession conducted on the property on which the advertising device is located; or

(c) Information required or authorized by law to be posted or displayed on such property; or

(d) The sale or leasing of the property upon which the advertising device is located.

1. Advertising devices which are for the purpose of sale or leasing of property by a real estate company or individual will be limited to a six (6) month permit. After the six (6) months, the real estate name must be removed and the message advertising the sale or lease of the property along with the telephone number of the real estate company is all that may remain. This will be a condition of the permit.

2. If the property is for sale by the owner and the owner is other than a real estate company, the message stating the leasing or sale of the property may list the name of the owner (letters of owners name may be no larger than one-half (1/2) the size of the letters in the basic message), and the telephone number and will not be restricted to the six (6) month permit.

(e) Advertising customarily used at similar places of business that are not legible from the main traveled way of the highway; or

(f) The advertisement or control of an activity or sale of products on the property where the advertising device is located.

(7) No advertising device referred to in subsections (5) and (6) of this section may exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim but excluding supports. Nor will these advertising devices be subject to restrictions as set forth in subsection (4) of this section of this regulation.

(8) Brand Name, "on-premise" advertising devices may advertise only the activities conducted upon the property on which they are located with exceptions as to type as follows:

(a) "Ford," "Chevrolet," "Pontiac," etc.

(b) "A & P," "Kroger," etc.

(c) "Kentucky Fried Chicken," "Bob Evans Restaurants," "Stuckeys," etc.

(9) Brand names such as the following may not be advertised because they are incidental to the primary activity:

(a) "Auto Light," "Delco," etc.

(b) "8 O'Clock Coffee," "Armour Meats," "Clabber Girl Baking Powder," etc.

(c) "Coco-Cola," "Pepsi," "Winstons," etc.

(10) Application for advertising device permits for on-premise signs must give a detailed description of the exact wording of the message to be conveyed on the advertising device. This information may be furnished by either a photograph or a drawing, and may be changed only upon the approval of the Bureau of Highways of a new application submitted by the permit holder which shows the proposed change in the message.

(11) An exception to subsection (10) is that a marquee type on-premise advertising device, such as a typical theatre or cinema advertising device, may change messages without a new application. This message change may be from one (1) legitimate on-premise activity to another.

CALVIN G. GRAYSON, Secretary

ADOPTED: April 25, 1978

RECEIVED BY LRC: May 2, 1978 at 3:20 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Ed. W. Hancock, Deputy Secretary for Legal Affairs, Department of Transportation, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION Bureau of Highways (Proposed Amendment)

603 KAR 3:020. Advertising devices on federal aid primary system.

RELATES TO: KRS 177.830 to 177.890

PURSUANT TO: KRS 13.082, 174.050, 177.830 to 177.890

NECESSITY AND FUNCTION: KRS 177.830 to 177.890 authorizes the Bureau of Highways to establish regulations for the control of advertising devices on the Federal Aid Primary System.

Section 1. (1) Except as provided in this regulation no person shall erect or maintain any advertising device within any protected area if such device is legible or identifiable from the main traveled way of any federal aid primary highway.

(2) The erection or maintenance of any advertising device located outside of urban areas and beyond 660 feet of the right-of-way which is legible and/or identifiable from the main traveled way of any federal aid primary highway is prohibited with the exception of:

(a) Directional and official signs and notices;

(b) Signs advertising the sale or lease of property upon which they are located; or

(c) Signs advertising activities conducted on the property on which they are located.

Section 2. Definitions. (1) "Advertising device" means any billboard, sign, notice, poster, display, or other device intended to attract the attention of operators of motor vehicles on the highway, and shall include a structure

erected or used in connection with the display of any such device and all lighting or other attachments used in connection therewith. However, it does not include directional or other official signs or signals erected by the state or other public agency having jurisdiction.

(2) "Billboard" advertising devices are those devices that contain a message relating to an activity or product that is foreign to the site on which the device and message is located or is an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(3) "On-premise" advertising devices are those devices that contain a message relating to an activity or the sale of a product on the property on which they are located.

(4) "Center line of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the center line of the main traveled ways of a non-divided highway.

(5) "Erect" means to construct, build, raise, assemble, place, affix, create, paint, draw or in any way bring into being or establish.

(6) "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(7) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of a separated roadway for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking area.

(8) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(9) "Protected areas" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet of the edge of the right-of-way of all federal aid primary highways within the Commonwealth. Where these highways terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected areas" means all areas inside the boundaries of the Commonwealth which are within 660 feet of the edge of the right-of-way of a federal aid primary highway in an adjoining state.

(10) "Federal aid primary highway" means any highway, road, street, appurtenant facility, bridge or overpass including a turnpike or limited access highway which is designated a portion of the federal aid primary highway system as may be established by law or as may be so designated by the Bureau of Highways and the United States Department of Transportation.

(11) "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing such relationship.

(12) "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting legs of an interchange.

(13) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(14) "Permitted" as used in this regulation means to exist only by permit from the Department of Transportation, Bureau of Highways.

(15) "Allowed" as used in this regulation means to exist without a permit from the Department of Transportation, Bureau of Highways.

(16) "Commercial or industrial zone" means an area zoned for business, commerce or trade pursuant to state or

local law, regulation or ordinance. To be zoned commercial or industrial, the entire city or county must be "comprehensively" zoned.

(17) "Comprehensively zoned" means that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.

(18) "Unzoned commercial or industrial area" means an area which is not zoned by state or local law, regulation or ordinance and on which a commercial or industrial activity is located, together with an area extending along the highway for a distance of 700 feet on each side of the activity boundary line and on the same side of the road. Each side of the highway where a commercial or industrial activity is located will be considered separately in applying this definition. All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or process areas of the activities and not, from the property boundary lines.

(19) "Commercial or industrial activities" means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(a) Outdoor advertising structures.

(b) Hospitals, nursing homes, cemeteries, funeral homes, etc; professional office buildings, and roadside markets not open over three (3) months a year.

(c) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.

(d) Activities normally or regularly in operation less than three (3) months a year.

(e) Transient or temporary activities.

(f) Activities not visible from the main traveled way.

(g) Activities more than 300 feet from the nearest edge of the right-of-way.

(h) Activities conducted in a building principally used as a residence.

(i) Railroad tracks and minor sidings.

(j) The sale or leasing of property.

(20) "Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one (1) state, that part of the urbanized areas in each such state or an urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the Secretary of the United States Department of Transportation. Such boundaries shall as a minimum encompass the entire urban place designated by the Bureau of the Census. Such urban areas shall be designated by official order of the Kentucky Secretary of Transportation.

(21) "Routine maintenance" means that maintenance is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting or manipulating to level or plumb the device but not to the extent of adding guys or struts for the stabilization of the sign or structure or substantially changing the sign. Replacement of new or additional panels or facing shall not constitute routine maintenance. The routine changing of messages is considered to be routine maintenance. Routine maintenance includes laminating or preparing panels in a plant or factory for the changing of messages.

(22) "Activity boundary line" means regularly used buildings, parking lots, storage and process areas which are an integral part of and contiguous to the activity.

(23) "Abandoned or discontinued" means that for a

period of one (1) year or more that the sign:

- (a) Has not displayed any advertising matter; or
- (b) Has displayed obsolete advertising matter; or
- (c) Has needed substantial repairs.

(24) "Non-conforming sign" means a sign which was lawfully erected but does not comply with the provisions of state law or regulations passed at a later date or later fails to comply with state law or regulations due to changed conditions such as but not limited to, zoning change, highway relocation or reclassification, size, spacing or distance restrictions. Performance of other than routine maintenance shall cause a non-conforming sign to lose its status and to become an illegal sign.

(25) "Destroyed" means that the sign has sustained damage by any means in excess of sixty (60) percent of the structure and facing or sixty (60) percent of the replacement value of such sign.

(26) "Church and civic club off premise sign" means any nationally, regionally or locally known religious, or non-profit organization advertising device.

(27) "Public service sign" means a sign erected or located on a school bus shelter.

(28) "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation. This definition applies to signs on school bus shelters only.

Section 3. General Provisions. (1) Erection or existence of the following advertising devices may not be permitted or allowed in protected areas:

- (a) Advertising devices advertising an activity that is illegal under state or federal law.
- (b) Obsolete advertising devices.
- (c) Advertising devices that are not clean and in good repair.

(d) Advertising devices that are not securely affixed to a substantial structure.

(e) Advertising devices which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or device.

(f) Advertising devices which prevent the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(g) Signs which contain, include, or are illuminated by any flashing, intermittent or moving lights, except those giving [such] public service information [as] of time, date, temperature or weather and limited to [two (2)] *one (1) cycle of four (4) displays. [per cycle.] They may contain no other [commercial] message. The maximum time limit for the completion of the four (4) display cycle shall be five (5) seconds.*

(h) Advertising devices which use lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway, or unless it is of such low intensity or brilliance as not to glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(i) Advertising devices which move or have any animated or moving parts, unless they are "on-premise" advertising devices and are located in commercially or industrially zoned areas.

(j) Advertising devices erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(k) Advertising devices erected upon or overhanging the right-of-way.

[(1) Advertising devices exceeding 1,250 square feet in area, including border and trim, but excluding supports.]

(2) An advertising device which is not visible from the main travelled way of the highway may be allowed in protected areas.

(3) If the advertising device is legible from more than one (1) highway on which control is exercised, the appropriate criteria applies to all of these highways. (See also: 603 KAR 3:010.)

(4) No advertising device may be erected or maintained within the state right-of-way except directional or other official signs erected by the state or other public agency having jurisdiction.

(5) Directional and other official signs, including signs placed by the bureau, signs denoting the location of underground utilities (limited to two (2) square feet), signs erected by federal, state and local governments to delineate boundaries of reservations, parks or districts (limited to 150 square feet), [civic and church signs giving meetings, time and place (limited to eight (8) square feet and limited to locations specifically permitted by the bureau,)] and signs such as "posted," "no fishing," "no hunting," etc. placed by property owners to discourage trespassing (limited to two (2) square feet) may be permitted or allowed subject to other provisions in these regulations.

(6) No on-premise advertising device, in zoned or unzoned commercial or industrial areas, will affect spacing for billboard advertising devices.

(7) A permit will be required from the Department of Transportation, Bureau of Highways, for any billboard advertising device. On-premise advertising devices will be allowed and controlled by surveillance.

(8) A non-conforming sign may continue to exist until just compensation has been paid to the owner, only so long as it is:

- (a) Not destroyed, abandoned or discontinued; and
- (b) Subjected to only routine maintenance; and
- (c) A sign conforming to local zoning or sign or building restrictions.

Section 4. Measurements of Distance. (1) In determining protected areas, distances from the edge of a right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the center line of a highway for a distance of 660 feet.

(2) In measuring distances for determination of spacing for billboard advertising devices, two (2) lines shall be drawn perpendicular to the center line of the main traveled way, so as to cause the two (2) lines to embrace the greatest longitude along the center line of said highway.

(3) V-shaped or back to back type billboard advertising devices shall have no greater distance than fifteen (15) feet apart at the nearest point and must be connected by bracing or maintenance walkway.

(4) The spacing for billboard advertising devices as described in Section 5, subsections (12) and (13), shall be measured from the nearest point between each device.

(5) In measuring distances for the determination of an unzoned commercial or industrial area, two (2) lines shall be drawn perpendicular to the center line of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway. All areas within the confines of these lines shall be considered a part of the unzoned commercial or industrial area. Measurements for these areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet in each direction.

Section 5. "Billboard" advertising device provisions.

(1) "Billboard" advertising devices may be constructed and maintained in protected areas which are zoned or unzoned commercial or industrial as defined in Section 2, subsections (16) and (18), of this regulation and comply with the provisions of this regulation for this type advertising device and other applicable state, county or city zoning ordinances or regulations and shall be limited to a maximum of 1,250 square feet subject to other provisions of this regulation.

(2) V-shaped or back to back "billboard" advertising devices will be considered as one (1) advertising device structure and must meet specifications as described in Section 4, subsection (3).

(3) "Billboard" advertising devices may contain two (2) messages per facing not to exceed the maximum sized area as set forth in Section 5.131 subsection (1).

(4) V-shaped or back to back structures will be allowed the maximum 1,250 square feet per facing.

(5) "Billboard" advertising devices that were legally erected may remain in place if they meet all criteria except spacing. Only routine maintenance may be performed on the sign and its structure until such time as proper spacing as described in this regulation is attained.

(6) Spacing rights will be issued on a "first come, first served" basis. Proof of lease of a site must accompany the application. Updating of proof of lease and application will be required annually until a sign has been erected.

(7) Billboard advertising devices may be permitted in zoned or unzoned commercial or industrial areas subject to other provisions of this regulation.

(8) Billboard advertising devices constructed in unzoned commercial and industrial areas will be permitted to exist as long as there is a commercial or industrial operated business. Upon the termination or abandonment of a business or industry for which the unzoned commercial or industrial area was created, the billboard advertising devices may remain in existence for one (1) year.

(9) No billboard advertising device may be illuminated by other than white lights.

(10) Any billboard advertising device which is legible or identifiable from the main traveled way must have an approved permit from the Department of Transportation, Bureau of Highways.

(11) No unzoned commercial or industrial area may be created when a commercial or industrial activity is more than 300 feet from the right-of-way.

(12) Spacing for billboard advertising device structures in unzoned commercial or industrial areas as described in Section 4, subsections (4) and (5), will be 300 feet measured from the nearest point between each advertising device, unless separated by a building, roadway, or natural obstruction, in such a manner that only one (1) sign located within the required spacing is visible from the highway at any time. This spacing will be reduced to 100 feet within incorporated municipalities which do not have comprehensive zoning.

(13) Spacing for billboard advertising device structures in any comprehensively zoned commercial or industrial area will be 100 feet, unless separated by a building, roadway, or natural obstruction, in such a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

Section 6. "On-premise" advertising devices. (1) "On-premise" advertising devices may have a maximum of 1,250 square feet in area if they qualify as commercial or industrial activities as set forth in Section 2, subsection

(19), of this regulation, and are on or within fifty (50) feet of the advertised activity and are within the property boundary lines of such activity.

(2) Only one (1) "on-premise" advertising device advertising a commercial or industrial activity as described in Section 2, subsection (19), may be located at a distance greater than fifty (50) feet from the activity boundary line. This advertising device will be limited in size as set forth in subsection (4) of this section. All other advertising devices must be within fifty (50) feet of the advertised activity.

(3) To qualify as an "on-premise" advertising device, the device must be within the property boundary lines of the advertised activity.

(4) No "on-premise" advertising device may exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim, but excluding supports, if it is farther than fifty (50) feet from the activity boundary lines (not the property boundary lines).

(5) Only one (1) "on-premise" advertising device which is listed as an exception in Section 2, subsection (19), may be located in such a manner that it is legible or identifiable from the main traveled way.

(6) Only one (1) of the following "on-premise" advertising devices may be located in such a manner that it is legible or identifiable from the main traveled way.

(a) The setting forth or indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located; or

(b) The name or type of business or profession conducted on the property on which the advertising device is located; or

(c) Information required or authorized by law to be posted or displayed on such property; or

(d) The sale or leasing of the property upon which the advertising device is located.

1. Advertising devices which are for the purpose of sale or leasing of property by a real estate company or agency will be limited to a six (6) month permit. After the six (6) months, the real estate company or agency name must be removed and the message advertising the sale or lease of the property along with the telephone number of the real estate company or agency is all that may remain. This will be a condition of the permit.

2. If the property is for sale by the owner and the owner is other than a real estate company, or agency the message stating the leasing or sale of the property may list the name of the owner (letters of owners name may be no larger than one-half (1/2) the size of the letters in the basic message), and the telephone number and will not be restricted to the six (6) month permit.

(e) Advertising customarily used at similar places of business that are not legible or identifiable from the main traveled way of the highway; or

(f) The advertisement or control of an activity or sale of products on the property where the advertising device is located.

(7) No advertising device referred to in subsection (5) and (6) of this section may exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim but excluding supports.

(8) Each business is permitted as many signs, stating only the name of the business, as they desire. In the absence of such signs, the owner may have one (1) sign giving the name of the business and a particular brand name product. The sign may not contain more than two-thirds (2/3) of the size for the brand name.

(9) The fact that a particular product is sold at a business will not be construed to mean that this is an activity.

(10) **Brand name.** "On-premise" advertising devices may advertise only the activities conducted upon the property on which they are located with exceptions as to type as follows:

- (a) "Ford," "Chevrolet," "Pontiac," etc.
- (b) "A&P," "Kroger," etc.
- (c) "Kentucky Fried Chicken," "Bob Evans Restaurants," "Stuckeys," etc.
- (d) Signs noting credit card acceptance or trading stamps may be allowed subject to a maximum size of eight (8) square feet.

(11) Brand names such as the following may not be advertised because they are incidental to the primary activity:

- (a) "Auto-Lite," "Delco," etc.
- (b) "8 O'Clock Coffee," "Armour meats," "Clabber Girl Baking Powder," etc.
- (c) "Coca-cola," "Pepsi," "Winstons," etc.

Section 7. "Grandfather Restrictions," On-premise Advertising Devices in Incorporated Municipalities and Urban Areas. Grandfather restrictions as described in this section shall apply to the following advertising devices only:

(1) Only one (1) "on-premise" advertising device will be "permitted" to overhang the state right-of-way, advertising any one (1) business. This refers to only those advertising devices in existence at the time of the adoption of this regulation and where there is not space off the right-of-way to accommodate an advertising device.

(2) Any new building or structure which comes into being after the adoption of this regulation, which abuts or is upon the state right-of-way, in which a business or activity is to be located, and such business or activity requires an advertising device, such new device must meet the conditions set forth in subsection (4)(a) of this section in addition to other provisions of this section and other sections of this regulation.

(3) Only "routine maintenance" as described in this regulation will be "permitted" on any "on-premise" advertising device under grandfather restrictions in this section.

(4) Any time an existing "permitted" advertising device is replaced, it must comply with the following criteria: [(a)] No advertising device or portion of an advertising device may be erected that extends more than two (2) feet beyond the face of the building, if the building is abutting or within the state right-of-way. This condition does not apply to advertising devices when the building or structure has a setback of more than two (2) feet from the state right-of-way. Any building with a setback from the right-of-way must reduce the overhang of the advertising device by the number of inches of the setback. No advertising device may be erected which has a base or any part of a base on the state right-of-way.

(5) Any advertising device with a base or any portion of a base which is located on the state right-of-way must be relocated off the right-of-way where there is sufficient space. If space is not available to relocate the existing advertising device off the right-of-way, relocation of the device must comply with restrictions as contained in subsection (4) of this section.

(a) Where there is space off the right-of-way to relocate an existing advertising device, the owner shall be notified and be allowed a reasonable amount of time to accomplish the relocation.

(b) In no instance shall the time allowed to relocate an advertising device, whose base is on the state right-of-way,

exceed a five (5) year period. No permit shall be issued for this type advertising device.

(6) Any "on-premise" advertising device "permitted" under grandfather restrictions, or any new advertising device, which is "permitted" to be erected under the provisions of subsection (4) of this section, must have an approved permit from the Department of Transportation, Bureau of Highways, to be a legal advertising device.

(7) No advertising device will be "permitted" under this section which interferes with any official sign, signal, or device.

(8) Any advertising device "permitted" under this section must meet the requirements for an "on-premise" advertising device as set forth in this regulation.

Section 8. "Church and civic club off-premise signs" provisions:

(1) Signs which qualify as "church and civic club signs" as described in Section 2, subsection (26) and which do not exceed the maximum size of eight (8) square feet [as described in Section 3, subsection (5)] including border and trim but excluding supports and which have spacing of 100 feet from any other church or civic club advertising device structure, which measurement is described in Section 4, subsections (2) and (5) shall be permitted.

(2) Only one structure shall be permitted at any one (1) location.

(3) "Church and civic club signs" may contain the following message only:

- (a) Name and address;
- (b) Location and time of meetings, and a directional arrow;

(c) Special events such as vacation bible school, revival, etc., may be permitted. These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet.

(4) In the event two (2) organizations desire to erect one (1) structure for their signs, a "Welcome to (City or County)," may be placed at the top of the structure. No slogan, flamboyant design or special message shall be permitted in the "Welcome to" part of the sign.

(5) Maximum size for sign structures as described in subsection (4) of this section will be twenty (20) square feet, including border and trim excluding supports.

(6) Only one (1) advertising device structure which advertises a particular church or civic club, may be erected facing any one (1) direction in advance of the advertised activity on any one (1) road.

(7) No advertising device structure described in this section shall be permitted on the state rights-of-way.

(8) Church and civic club sign structures will not affect spacing for "billboard" advertising structures.

(9) Church and civic club sign structures must have a permit from the Department of Transportation, Bureau of Highways, to be a legal advertising device.

Section 9. "Public Service Signs." "Public service signs" may be "permitted" if they conform to the following provisions:

(1) "Public service signs" may be permitted on school bus shelters only.

(2) Maximum size for a "public service sign" shall be thirty-two (32) square feet including border and trim.

(3) Must contain a public service message which occupies not less than fifty (50) per cent of the area of the sign.

(4) May identify the donor, sponsor or contributor of the shelter.

(5) Contains no other message.

(6) Has obtained an encroachment permit from the Bureau of Highways prior to the existence of the sign if it is to be located on the state right-of-way.

(7) Has been authorized or approved in writing by the city or county having jurisdiction if it is to be located off the state right-of-way.

(8) Does not create a sight distance or safety hazard.

(9) Only one (1) sign on each shelter shall face in any one (1) direction.

CALVIN G. GRAYSON, Secretary

ADOPTED: April 25, 1978

RECEIVED BY LRC: May 2, 1978 at 3:20 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Ed W. Hancock, Deputy Secretary for Legal Affairs,
Department of Transportation, Frankfort, Kentucky
40601.

DEPARTMENT OF TRANSPORTATION

Bureau of Highways
(Proposed Amendment)

603 KAR 5:096. Highway classifications.

RELATES TO: KRS 189.222

PURSUANT TO: KRS 13.082, 174.050, 189.222

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable weight and dimension limits on all highways included in the State Primary Road System. This regulation is adopted to identify each road in the highway system and indicate its classifications.

Section 1. The weight and dimension limits set forth in 603 KAR 5:066 and 603 KAR 5:070 for truckway classifications shall apply on all highways in the State Primary Road System as indicated herewithin, unless bridge postings prohibit such weights on any particular segment.

Section 2. The maximum weight limits for the three (3) classifications of highways are as follows: "AAA" System, 80,000 pounds gross weight; "AA" System, 62,000 pounds gross weight; "A" System, 44,000 pounds gross weight. There shall be no tolerances allowed on gross weight, axle weight, or combinations of axle weights on the Interstate and National Defense Highway System only.

Section 3. The classifications for each highway* in the State Primary Road system are as follows:

KY 69

AAA—From Jct. US 231 at Hartford to south end of Toll Bridge in Hawesville [Jct. US 60 at Hawesville].

A—From a point 2.9 miles S.W. of Equality in Ohio Co. to Jct. US 231 at Hartford. [; and from Jct. US 60 at Main and Cross Sts. in Hawesville to end of State Maintenance at south end of Toll Bridge in Hawesville.]

*COMPILERS NOTE: Only those particular highways affected by the proposed amendment are shown here. 603

KAR 5:096 is printed in full in Volume 2, "Kentucky Administrative Regulations Service."

CALVIN G. GRAYSON, Secretary

ADOPTED: April 24, 1978

RECEIVED BY LRC: April 27, 1978 at 3:10 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Ed. W. Hancock, Deputy Secretary for Legal Affairs,
Department of Transportation, Frankfort, Kentucky
40601.

EDUCATION AND ARTS CABINET

Department of Education
Office of Superintendent
(Proposed Amendment)

701 KAR 1:020. State plan for career education.

RELATES TO: KRS 156.100

PURSUANT TO: KRS 13.082, 156.070, 156.130, 156.160

NECESSITY AND FUNCTION: A state plan is necessary in order to be eligible to receive federal funds under Title IV, P. L. 93-380.

Section 1. Pursuant to the authority vested in the Kentucky State Board [of] *for Elementary and Secondary Education*, the Kentucky State Plan for the Administration of ESEA, Title IV shall be prepared and approved by the State Board [of] *for Elementary and Secondary Education*, in accordance with the appropriate federal guidelines, and submitted to the U. S. Commissioner of Education for his approval. This document is incorporated by reference and hereinafter shall be referred to as the "State Plan" *Revised March 15, 1978* [Revised March 22, 1977]. Copies of the state plan may be obtained from the Division of Title IV, State Department of Education.

JAMES B. GRAHAM

Superintendent of Public Instruction

ADOPTED: March 15, 1978

RECEIVED BY LRC: April 24, 1978 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Mr. Fred Schultz, Secretary, Kentucky State Board
for Elementary and Secondary Education, 17th Floor,
Capital Plaza Office Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
School District Finance
(Proposed Amendment)

702 KAR 1:020. Length of employment.

RELATES TO: KRS 157.390(2)(a)

PURSUANT TO: KRS 13:082, 156.070, 156.130, 156.160

NECESSITY AND FUNCTION: To provide approved employment under the minimum foundation program beyond the regular school term for vocational units, supervisory units and units for administrators, directors of pupil personnel, and special instructional services.

Section 1. School districts shall be allotted teachers' salaries for more than 9.25 months by the minimum foundation program for classroom units listed below. Allotments shall be limited to the lesser of:

- (1) The number of months employed in the position;
- (2) Maximum months under this regulation; or
- (3) The months approved under a program for lengthened employment.

Section 2. The following positions shall be allotted a maximum of 2.75 months extended employment:

- (1) Superintendent;
- (2) Assistant superintendent;
- (3) Finance officer and school business administrator;
- (4) Principal who administers a school with twenty-five (25) or more full-time equivalent teachers under his supervision;
- (5) Supervisors of instruction;
- (6) Directors of pupil personnel in districts with fifty (50) or more basic classroom units allotted;
- (7) Local director of vocational education;
- (8) Teachers of vocational education in:
 - (a) Agribusiness;
 - (b) Business and office;
 - (c) Marketing and distributive education;
 - (d) Health and personal services; [occupations];
 - (e) Home economics;
 - (f) Public service [education];
 - (g) Special vocational programs;
 - (h) Industrial education level III. [Trade and industrial.]

Section 3. The following position shall be allotted a maximum of two (2) months extended employment: Principal who administers a school with from 12.0 to 24.9 full-time equivalent teachers under his supervision.

Section 4. The following positions shall be allotted a maximum of 1.25 months extended employment:

- (1) Assistant principal assigned to a school with 25.0 or more full-time equivalent teachers;
- (2) Full-time guidance counselors.

Section 5. The following positions shall be allotted a maximum of one (1) month extended employment:

- (1) Full-time librarians;
- (2) Principal who administers a school with from 8.0 to 11.9 full-time equivalent teachers under his supervision;
- (3) Directors of pupil personnel in districts with fewer than fifty (50) basic classroom units allotted.

Section 6. A program plan for lengthened employment for all positions listed in this regulation with the exception of superintendent, assistant superintendent, finance officer, school business administrator, and director of pupil personnel shall be submitted annually to the Superintendent of Public Instruction for approval.

JAMES B. GRAHAM,
 Superintendent of Public Instruction

ADOPTED: March 15, 1978

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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 1:090. Replacement of instructional fees; funds, distribution and use.

RELATES TO: KRS 156.160(10)

PURSUANT TO: KRS 13.082 [18.083], 156.070; 156.130

NECESSITY AND FUNCTION: To provide guidelines for the distribution and use of funds appropriated for replacement of instructional fees.

Section 1. The state allotment per pupil in average daily attendance shall be obtained by dividing the amount appropriated for replacement of instructional fees by the state total *Foundation Program* average daily attendance for the first two (2) months of the prior year as certified by the Bureau of Pupil Personnel Services.

Section 2. Each district's allotment for replacement of instructional fees shall be the state allotment per pupil multiplied by the district's *Foundation Program* average daily attendance for the first two (2) months of the prior year.

Section 3. Prior to July 1 of each year [Within two (2) days after certification of the average daily attendance of the prior year by the Bureau of Pupil Personnel Services,] the Division of *Local School District Finance* shall notify each local school district of its allotment. The Executive Department for Finance and Administration, on certification of the Superintendent of Public Instruction, shall draw warrants for the entire appropriation on the State Treasurer. Checks shall be issued by the State Treasurer and transmitted to the Department of Education for distribution to each school district when the district has fully complied with the school laws and Kentucky administrative regulations of the State Board for [of] *Elementary and Secondary Education*.

JAMES B. GRAHAM,
 Superintendent of Public Instruction

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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 4:020. Plans and specifications for construction.

RELATES TO: KRS 162.060

PURSUANT TO: KRS 13.082, 156.070, 156.130, 156.160

NECESSITY AND FUNCTION: To prepare plans and specifications for school building construction.

Section 1. After approval of an application of forms provided by the *State Board for Elementary and Secondary Education* [State Board of Education] containing program and financial information, the architect shall prepare sketches of the proposed construction which upon approval of the local board of education shall be submitted to the Superintendent of Public Instruction for review and approval.

Section 2. Upon approval of proposed sketches or program plan, the preliminary plans, outline specifications, and estimated cost shall be submitted to the Superintendent of Public Instruction for approval on forms provided by the *State Board for Elementary and Secondary Education* [State Board of Education].

Section 3. Preliminary plans shall include the type of construction, a general vicinity plan, and a plot plan which show the location of existing and proposed buildings, existing and proposed contour lines, utility lines and easements, driveways and highways, floor plan of building, preliminary design of mechanical, electrical and structural systems, sections through the building and elevations of the buildings. The architect shall include a one-fourth (1/4) inch scale drawing of all special areas *after acceptable preliminary plans have been submitted as set forth in Section 2.* [with the preliminary plans.] These drawings shall show all equipment proposed in each special area. After approval of preliminary plans, the local board of education may authorize the architect or engineer to prepare completed plans and specifications.

Section 4. Approval of the completed plans and specifications shall be given in writing by the Superintendent of Public Instruction prior to advertisement for bids. Completed plans and specifications shall include all the provisions required in the preliminary plans plus detailed information concerning site development, plumbing, heating, ventilation, electrical and structural design. The specifications shall provide for contract documents, insurance, performance bonds, prevailing wage scale and technical specifications.

Section 5. Until such time that construction is finally completed and/or occupied by the local board of education, the contractors shall carry any and all insurance required by law, regulation, and custom to hold the board safe from loss. Such insurance shall include but not be limited to liability, builders' risk, including the perils of fire and extended coverage, vandalism, and malicious mischief and such boiler and machinery insurance as may be required by the law or the contract documents. The architect shall attest to the board in writing the schedule of

such coverage. In the event the board of education elects to carry a portion of the necessary insurance, a plan for such coverage shall be submitted to the Superintendent of Public Instruction for his approval.

JAMES B. GRAHAM

Superintendent of Public Instruction

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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 4:030. Local board's contract with architect, engineer.

RELATES TO: KRS 156.160(11), 322.360

PURSUANT TO: KRS 13.082, 156.070, 156.130, 156.160

NECESSITY AND FUNCTION: To provide a legal document of agreement concerning work to be done and the amount of pay to be received.

Section 1. A local board of education and an architect or engineer currently registered in Kentucky shall negotiate and enter into a contract for the services needed on forms provided by the *State Board for Elementary and Secondary Education* [State Board of Education] prior to preparation of plans for remodeling, alterations, or construction of school buildings and facilities. This contract between the local board of education and the architect or engineer shall be submitted to the Superintendent of Public Instruction for approval. The local district shall be notified of the approval or disapproval of the contract within thirty (30) days.

JAMES B. GRAHAM

Superintendent of Public Instruction

ADOPTED: March 15, 1978

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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 4:050. Building sites; inspection, approval.

RELATES TO: KRS 162.010

PURUSANT TO: KRS 13.082, 156.070, 156.130, 156.160

NECESSITY AND FUNCTION: To provide for the location of school buildings in accordance with the program approved by the Superintendent of Public Instruction.

Section 1. The Superintendent of Public Instruction shall cause an inspection to be made of each proposed school building site or site addition. *Site approval must be given by the Superintendent of Public Instruction prior to any purchase or commitment to purchase, except that an option-to-purchase which in no way obligates purchaser, may be executed to assure availability of site during this approval procedure.* [and shall approve each site.] All school sites shall be in agreement with the educational facilities survey recommendations as approved by the Superintendent of Public Instruction and shall have the approval of the Superintendent of Public Instruction prior to initiation of an application for approval of a construction project.

Section 2. The minimum size of school sites shall be as follows:

(1) Elementary school: Five (5) acres plus an additional acre for each 100 or fraction of 100 students of anticipated enrollment.

(2) Middle school, junior high school, and high school: Ten (10) acres plus an additional acre for each 100 or fraction of 100 students of anticipated enrollment.

Section 3. Prior to contracting for the purchase of a school site, the following information shall be provided to and approved by the Superintendent of Public Instruction:

(1) A fee simple title shall be obtained in conformance with KRS 162.010. A copy of the deed and attorney's title certificate shall be furnished the Superintendent of Public Instruction for approval of the title to the site.

(2) Water supply and sewage disposal shall be approved by the Department of Natural Resources and Environmental Protection and the Fire Marshal's office having jurisdiction.

(3) Access to adequate public roads or streets to accommodate anticipated school traffic.

Section 4. A permanent monument (four (4) by four (4) by eighteen (18) inches deep concrete with a brass pin) shall be set in the boundary line of the site at a point which will provide a starting point for initial and final plot of metes and bounds which will circumscribe the site.

JAMES B. GRAHAM,
Superintendent of Public Instruction

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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 4:060. Construction criteria.

RELATES TO: KRS 162.060, 162.160

PURSUANT TO: KRS 13.082, 156.070, 156.130, 156.160(5)

NECESSITY AND FUNCTION: To insure functional operation, comfort and economical operation of the proposed educational facility.

Section 1. The structural design for construction of all new school buildings, building additions and remodeling shall be in conformance with *applicable building codes and regulations and approved by authorities having jurisdiction.* [the current revised Kentucky Standards of Safety and all other applicable state and local building codes and regulations.] The following conditions shall be provided in the design of all new school buildings:

(1) The minimum width for elementary school main corridors shall be eight (8) feet in the clear.

(2) The minimum width for a middle school, junior high school, or high school main corridors shall be nine (9) feet in the clear.

(3) A ramp up to one (1) to twelve (12) slope will be approved. All ramps shall have a non-slip surface. Changes in direction of ramps must have level landings.

(4) Corridors shall terminate at an approved egress or at a stairway which leads directly to an approved egress. A corridor extension of six (6) feet will be permitted. In no case shall more than two (2) classrooms empty into this corridor extension.

(5) The minimum width of secondary corridors shall be six (6) feet.

Section 2. All [required] exterior doors must swing out, and they shall be provided with panic hardware, except exit doors from individual classrooms not housing more than forty-five (45) people. No less than two (2) exits shall be provided for each building.

(1) All [required] exit doors shall be either recessed or protected by a canopy, except exit doors from individual classrooms not housing more than forty-five (45) people. A landing of not less than four (4) feet shall be provided from the door threshold to the first step.

(2) All exterior exit doors and side lights, when glazed, shall have either [clear wire glass] safety laminated glass, tempered glass panels, or approved equals.

(3) Classroom doors shall be at least three (3) feet by six (6) feet and eight (8) inches.

(4) Any door swinging into a corridor shall swing through 180 degrees or be recessed.

(5) In any room where there is a chance of panic by explosion such as a chemistry room, shops, etc., and in any room that houses more than forty-five (45) students, library, cafeteria, etc., exit doors shall swing out.

(6) Each building shall be so designed as to minimize architectural barriers to the handicapped and shall include specific provisions for ramps and doorways to accommodate wheelchairs. [of six (6) or more classrooms shall be provided with a ramp and door of widths to accommodate a wheelchair.]

Section 3. No less than two (2) stairways shall be pro-

vided in multiple story buildings. The stairways shall be remote from each other.

(1) All required stairways shall open directly to the outside.

(2) Width of main stairways shall not be less than forty-four (44) inches between handrails. All stairways must be provided with a handrail on each side.

(3) Risers for main stairways shall not exceed seven (7) inches, and treads shall not be less than eleven (11) inches in width.

(4) No door shall open immediately upon a flight of stairs. A landing at least the width of the open door plus three (3) feet shall be provided.

(5) No storage space shall be located in or under any stairwell.

(6) Exterior stairways or ramps used as primary building exits shall be covered and shielded from weather.

Section 4. Standard elementary school classrooms shall be as follows:

(1) A minimum of 720 square feet of floor space.

(2) A minimum width of twenty-two (22) feet.

(3) A minimum of forty-eight (48) square feet of chalkboard.

(4) A minimum of forty-eight (48) square feet of tackboard.

(5) A storage space for children's clothing.

(6) A storage space for teaching materials and records.

(7) Ceiling height shall be a minimum of eight (8) feet and *eight (8) [nine (9)]* inches with mechanical ventilation and a minimum of nine (9) feet and eight (8) inches with natural ventilation.

Section 5. Standards for middle school, junior high and high school classrooms shall be as follows:

(1) A minimum of 625 square feet of floor space.

(2) A minimum width of twenty-two (22) feet.

(3) A minimum of forty-eight (48) square feet of chalkboard.

(4) A minimum of forty-eight (48) square feet of tackboard.

(5) Ceiling height shall be a minimum of eight (8) feet and *eight (8) [nine (9)]* inches with mechanical ventilation and a minimum of nine (9) feet and eight (8) inches with natural ventilation.

Section 6. A minimum window, twenty-four (24) by thirty (30) inches, shall be required in all exterior classrooms. Only interior rooms will be approved without a window.

(1) All windows installed in instructional areas shall have a minimum of fifty (50) percent of operable sash.

(2) Operable sections of windows shall be within the reach of the classroom teacher.

(3) Clerestory windows and skylights shall not be approved in classroom areas.

(4) *The height of a window sash or frame shall be a minimum of thirty (30) inches above the finished floor. [All window glass in classroom areas shall be a minimum of thirty (30) inches above the floor. The maximum height of the window sill shall be thirty-two (32) inches above the floor.]*

(5) In classrooms approved without mechanical ventilation, the area of window ventilation shall be equal to ten (10) percent of the floor area.

Section 7. Toilet rooms, shower rooms and locker rooms in a school building shall be exhausted by means of

an exhaust duct system. Exhaust registers shall be located at or in the ceiling of each area and exhausted directly to the outside. Exhaust ducts serving rooms for opposite sexes shall not be connected to a common exhaust duct unless adequate sound proofing is provided. There shall be a minimum of twenty (20) air changes per hour of air provided for all areas.

Section 8. (1) All exterior walls shall have a *maximum composite [minimum]* U-factor of .20 BTUH per square foot per degree Fahrenheit.

(2) A *maximum composite [minimum]* U-factor for roofs shall be .10 [.12] BTUH per square foot per degree Fahrenheit.

Section 9. Standards for auxiliary spaces shall be as follows:

(1) Auditoriums, gymnasiums, and multipurpose rooms shall be located on the ground level and regardless of size shall be provided with at least two (2) exits remote from each other.

(2) Noise producing areas shall be located remote and shielded from classroom areas.

(3) A principal's office, secretaries' space and reception area shall be provided in all school buildings.

(4) Records storage room shall be provided in all secondary schools. This shall be a fireproof room with a two (2) hour *rating*. [rated door]

(5) Locker space, properly ventilated, shall be provided for each middle, junior high, and high school student.

(6) A guidance area shall be provided in all [middle school, junior high, and high] school plants.

(7) A first aid room with toilet shall be provided in all school buildings.

(8) A general storage area for equipment and material storage shall be provided in all school plants.

(9) Custodial storage and equipment rooms shall be provided in all school buildings.

(10) Ceiling heights of all special instructional areas shall be eight (8) feet and *eight (8) [nine (9)]* inches or more relative to the area of the room. *The corridor height shall be a minimum of eight (8) feet in the clear.*

Section 10. Old buildings remodeled for instructional purposes shall insofar as practical, meet the requirements of new spaces that would be used for the same purposes. The plans and specifications shall be approved by the Superintendent of Public Instruction.

JAMES B. GRAHAM,
Superintendent of Public Instruction

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Elementary and Secondary Education, 17th Floor, Capital
Plaza Office Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 4:070. Mechanical, electrical, sanitary, heating and ventilation design.

RELATES TO: KRS 162.060, 162.160

PURSUANT TO: KRS 13.082, 156.070, 156.130, 156.160(5)

NECESSITY AND FUNCTION: To provide for healthy, safe and comfortable space for learning.

Section 1. The design of the mechanical, ventilation or air conditioning system in schools shall be in accord with the recommendations and standards contained in the latest edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers Guide.

(1) (a) The mechanical room shall be planned to permit repair and replacement of equipment, satisfactory cleaning and care, and provide for combustion air. *The mechanical equipment shall be remote from the instructional areas and shall be sufficiently soundproofed so that its operation will not disturb instruction in the classrooms.* [All mechanical equipment shall be remote from the classroom area.]

(b) Where the roof areas are being used to house major mechanical and electrical components, a set of stairs or ships ladder shall be provided. Walkways shall be provided on the roof from roof access point to each piece of major mechanical and electrical equipment.

(2) The heating system shall be of ample capacity and so installed as to insure uniform temperature of seventy (70) degrees being maintained in all occupied rooms when the outside temperature is zero (0). The air conditioning system (if provided) shall be of ample capacity and so installed as to insure uniform temperature of seventy-five (75) degrees, fifty (50) percent relative humidity being maintained in all occupied rooms when outside temperature is ninety-five (95) degrees db, seventy-eight (78) degrees wb.

(3) Mechanical ventilation shall be provided in all new schools and additions having six (6) or more classrooms.

(4) Mechanical ventilation system in classrooms shall provide eight (8) air changes per hour or thirty (30) cfm per pupil during occupied periods, whichever is greater. A minimum of ten (10) percent of this amount shall be outside air. Mechanical ventilation systems shall be capable of maximum utilization of outside air for ventilating and cooling purposes. Mechanical ventilation systems shall be provided with approved filters and automatic room temperature control. Air shall be introduced in such a manner as not to produce drafts.

(5) Mechanical ventilation systems for all multipurpose rooms, auditoriums, gymnasiums and cafeterias shall provide a minimum of six (6) air changes per hour or fifteen (15) cfm per occupant, whichever is greater, a system shall be designed so that it is capable of providing 100 percent outside air for ventilation or cooling when required.

(6) All windowless classrooms shall be air conditioned.

Section 2. All electrical work shall conform to the requirements of the National Electric Code *in effect at the time of approval of the plans or changes thereto, and installation must be approved by authorities having jurisdiction prior to acceptance of the project.*

(1) Electrical service entrance lines to school buildings shall be remotely located from student traffic lanes and areas planned for outside activities.

(2) Artificial light at a minimum of fifty (50) footcandles

at desk level shall be provided for a classroom.

(3) Artificial light at a minimum of twenty (20) footcandles shall be provided for all stairways and corridors.

(4) Light switches in shower and toilet rooms shall be remotely located from plumbing fixtures. Windowless shower and toilet rooms shall be keyed operated switches.

(5) A minimum of two (2) duplex convenience outlets located remote from each other shall be provided for each classroom. For ETV power supply, one (1) of the outlets shall be located *not less than forty-eight (48) inches nor more than sixty (60)* [approximately forty (40)] inches above the floor at the end of a chalkboard remote from the entrance to the classroom.

(6) A convenience outlet shall be provided at each drinking fountain location.

(7) Each corridor shall be provided with grounded convenience outlets of such capacity and at such intervals to accommodate floor cleaning machines in corridors and classrooms.

(8) A convenience outlet shall be located near all major entrances of school buildings.

Section 3. All plumbing shall [be installed in accord with] *conform to the requirements of the Kentucky Plumbing Code in effect at the time of approval of the plans or changes thereto, and installation must be approved by authorities having jurisdiction prior to acceptance of the project.*

(1) The sewage disposal plant, where required on school property, shall be remotely located from all developed areas. Natural or installed screening shall be provided for the disposal unit.

(2) Drinking fountains shall be provided in the ratio of one (1) to seventy-five (75) students. A minimum of one (1) drinking fountain on each floor and/or each wing shall be provided. Not more than two (2) drinking fountains shall be permitted at each location. Drinking fountains shall not be placed in toilet rooms.

(3) Physical Education shower and locker rooms for each sex shall be provided in all schools housing seventh (7th) grade and above.

(4) Each school building [of six (6) classrooms or more] shall provide access to one (1) toilet compartment, for each sex, that will accommodate a wheelchair.

(5) When an addition to an existing building is made, additional sanitary conveniences, when counted with the existing conveniences, shall be provided to meet the requirements for the total student capacity.

(6) A hose bib and floor drain shall be provided in all toilet rooms containing more than one (1) water closet. Hose bibs shall be a minimum of eighteen (18) inches above floor and readily accessible.

(7) The following schedule shall be used as a basis for installing the fixtures in toilet rooms. Consideration will be given to multiple type lavatories.

ELEMENTARY SCHOOLS

No. of Boys	Water Closets	Urinals	Lavatories	No. of Girls	Water Closets	Lavatories
25	1	1	1	25	2	1
50	2	2	2	50	3	2
100	2	4	3	100	6	3
200	3	6	5	200	8	5
300	4	8	6	300	10	6
400	5	10	8	400	12	8
500	6	12	9	500	14	9

MIDDLE, JUNIOR HIGH AND SECONDARY SCHOOLS

No. of Boys	Water Closets	Urinals	Lavatories	No. of Girls	Water Closets	Lavatories
25	1	1	1	25	1	1
50	1	2	1	50	2	1
100	2	4	2	100	5	2
200	3	6	4	200	7	4
300	4	8	5	300	9	5
400	5	10	7	400	11	7
500	6	12	8	500	13	8

(8) School buildings of six (6) classrooms or more shall be provided with two (2) exterior hose bibs.

(9) A custodial service sink and shelving shall be provided, in a custodial work room, on each floor level of the building.

JAMES B. GRAHAM,
Superintendent of Public Instruction

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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 4:080. Temporary or supplemental units.

RELATES TO: KRS 162.060, 162.160

PURSUANT TO: KRS 13.082, 156.130, 156.160(5), 156.170

NECESSITY AND FUNCTION: To provide for emergency classrooms and temporary instructional units.

Section 1. Relocatable classrooms which can be moved and assembled into instructional units on the school site may be approved on a year to year basis subject to the following:

(1) The minimum floor area of a relocatable classroom shall be as required in permanent school building construction.

(2) The minimum heating, artificial lighting and ventilation shall be the same as for permanent construction.

(3) The minimum ceiling height shall be seven (7) feet and ten (10) inches at the lowest point.

(4) The minimum floor load shall be fifty (50) pounds per square foot live load.

(5) All units shall be securely anchored to withstand a wind of seventy-five (75) miles per hour.

(6) Steps with landings and handrails shall be provided for all exit doors. *A ramp serving at least one (1) entry shall be provided.*

(7) Each classroom shall be provided with two (2) doors, remote from each other.

(8) Chalkboard and tackboard, a minimum of forty-eight (48) square feet of each, shall be provided.

Section 2. The plans and specifications for approval shall provide the following:

(1) A plot plan of existing school which shows all boundaries, buildings, walks, drives, and other developments and the proposed location of the unit. Electrical service lines to the units, and water and sewage lines where applicable shall be shown on the plot plan.

(2) Specifications that each bidder will furnish a unit that will meet all of the regulations of the *State Board for Elementary and Secondary Education* [State Board of Education], and applicable [all] regulations of the Department of *Housing, Buildings and Construction*. [Insurance, Division of Fire Prevention, and all regulations of the Department for Natural Resources and Environmental Protection if plumbing is required.] The specifications shall also require each bidder to submit with the bid, a copy of the plans and specifications bearing the seal of a Kentucky registered architect, of the unit being bid. The specifications shall require the successful bidder to submit a copy of the plans, bearing the seal of a Kentucky registered architect or engineer, to the Department of *Housing, Buildings and Construction* and [Insurance, Division of Fire Prevention;] Department of Education. [and Department for Natural Resources and Environmental Protection.]

Section 3. (1) The successful contractor shall furnish the local board of education certification of completion on forms provided by the *State Board for Elementary and Secondary Education* [State Board of Education]. The local board of education shall approve the form and forward to the Superintendent of Public Instruction a completed copy or a letter stating why the board does not agree that the construction is substantially completed. The Superintendent of Public Instruction shall make a final inspection of the project following receipt of the required *State Board for Elementary and Secondary Education* [State Board of Education] form.

(2) Following the final inspection, a written statement of completion or a list of items to be completed, will be given to the local board of education with a copy to the contractor. Written authorization for full payment of the contract will be given when the project is completed in accord with the plans and specifications.

JAMES B. GRAHAM,
Superintendent of Public Instruction

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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

703 KAR 2:050. Attendance; resident, non-resident.

RELATES TO: KRS 157.350, 158.030, 158.240, 159.035

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: Regulations are necessary to assure uniformity in recording attendance of all pupils in the schools of Kentucky.

Section 1. The word "pupil" as the basis for average daily attendance as provided for in Kentucky Revised Statutes and for all other uses in the public school system shall mean all persons who are in attendance at school between the ages of six (6) and twenty-one (21) years. Any pupil who meets requirements of KRS 158.030 for entering school shall be considered six (6) years of age for attendance purposes.

Section 2. The daily attendance of pupils shall be determined by recording their attendance immediately following the opening of school in the morning and immediately following the lunch period in the afternoon. Pupils not present at these sessions shall not be counted in attendance in determining average daily attendance unless:

(1) The pupils are absent as participants in school activities which have been authorized by the local board of education and which are a definite part of the instructional program of the school, or

(2) The pupils are absent as participants in activities which are provided in KRS 158.240 and 159.035. Pupils shall not be counted in attendance when they are absent as spectators at school activities.

Section 3. Pupils shall not be counted in attendance unless they are physically present in the school. They shall be counted absent although such absence is due to factors beyond their control such as inclement weather or failure of the transportation system to operate.

Section 4. (1) Pupils enrolled in both a public common school and a non-public school under a dual enrollment plan shall be counted in attendance for ADA purposes for the time they are in attendance at the public school under straight shared-time.

(2) "Straight shared-time" is defined as an arrangement whereby a child regularly or concurrently attends a public common school part-time and a non-public school part-time pursuing part of his education under the direction and control of the public common school and the remaining under the direction of the non-public school.

Section 5. Pupils enrolled in a public common school and attend the public common school one-half (½) day and attend the remainder of the school day in a state vocational technical school or an area vocational education center shall be counted in full-time attendance at the public common school.

Section 6. No pupils shall be allowed to make up absence for the purpose of counting such make-up activities in computing average daily attendance.

Section 7. A copy of the written agreement local boards

of education execute for average daily attendance of non-resident pupils [for a current school year], as provided by KRS 157.350(5), and the attendance report for the first two (2) months of the current school year as required by KRS 157.360(4) shall be submitted to the State Department of Education prior to November 10 [December 1] of each year, on forms furnished by the State Department of Education.

(1) Names of non-resident pupils, whose attendance is covered by the agreement, shall be listed on the back of the agreement on file in the office of the local board of education and also on the back of the copy of the agreement filed with the State Department of Education.

(2) Changes may be made in the original non-resident pupil agreement, up to the close of the school year, to include only the non-resident pupils enrolling after the close of the second school month. A copy of the amended agreement shall be on file in the office of the local board of education and a copy of the amendment(s) submitted to the State Department of Education along with the local superintendent's annual statistical report, no later than June 30 of the current school year.

(3) In the event local boards of education fail to enter into a written agreement for non-resident pupils as outlined in subsections (1) and (2), Section 7 of this regulation, the local board of education educating the non-resident pupils shall not receive attendance credit for these non-resident pupils.

Section 8. The teacher's register of daily attendance or reasonable facsimile recommended by the Superintendent of Public Instruction and approved by the State Board for Elementary and Secondary [of] Education shall be the original source of attendance data for all pupils enrolled in the public elementary and secondary schools of the Commonwealth of Kentucky and shall be maintained in accordance with the instructions which are prepared and distributed by the State Department of Education.

Section 9. The school days on which schools are dismissed in accordance with State Board for Elementary and Secondary [of] Education regulations shall be counted as school days and the reason for dismissal shall be indicated by writing in the attendance column of the teacher's register of daily attendance or the approved facsimile under the date of the day so dismissed.

Section 10. Dates of days excluded from the school month by reason of State Board for Elementary and Secondary [of] Education regulations shall not be entered in the teacher's register of daily attendance or facsimile.

JAMES B. GRAHAM,
 Superintendent of Public Instruction

ADOPTED: April 11, 1978

RECEIVED BY LRC: April 21, 1978 at 1:25 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
 TO: Fred Schultz, Secretary, Kentucky State Board for Elementary and Secondary Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

**EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)**

704 KAR 5:050. Public school programs.

RELATES TO: KRS 157.312, 157.315, 157.360, 158.070, 158.090, 158.300

PURSUANT TO: KRS 13.082, 156.070, 156.130, 156.160

NECESSITY AND FUNCTION: KRS 157.315 requires the State Board for Elementary and Secondary Education [of Education] to adopt regulations defining and prescribing the criteria for kindergartens in the common schools and the eligibility requirements of pupils to attend these classes.

Section 1. Personnel qualified to serve in an approved unit for kindergarten shall hold Kentucky teacher certification as follows:

(1) A Kentucky certificate endorsement for kindergarten teaching; or

(2) A Kentucky certificate valid for kindergarten teaching; or

(3) A Kentucky certificate valid for elementary classroom teaching initially issued prior to September 1, 1971.

[Section 1. (1) Each teacher of kindergarten shall hold a regular elementary certificate and shall have completed the courses specified in the State Board of Education regulations.]

[(2) Teachers must be aware of the physical, social, emotional and intellectual needs of young children; how they grow and develop, how personality development is affected by educative experiences; and how their needs may best be met through guidance adapted to each individual child.]

[(3) Provisional and standard elementary certificates issued after September 1, 1971, shall be valid for teaching at the kindergarten level only upon completion of the endorsement program for kindergarten teaching.]

Section 2. State funding for a public school kindergarten unit shall be allocated for each fifty (50) kindergarten children enrolled in a school district. A fractional portion of a unit will be awarded on the ratio of one (1) unit to fifty (50) children enrolled.

[Section 2. To insure safety and guidance for the growth and development of children, the pupil-teacher ratio shall not exceed twenty (20) children per teacher. When the pupil-teacher ratio exceeds twenty (20), the local board of education shall assign a fulltime teacher aide to assist the certified kindergarten teacher.]

Section 3. Scheduling for a kindergarten unit shall meet one (1) of the following plans:

(1) Conduct half-day session(s) for the school year.

(2) Conduct all day session(s) for the first semester. Conduct all day session(s) for the second semester. The second semester enrollment shall be children that have not previously enrolled in a kindergarten session in the district.

(3) Conduct alternate day session(s) all year.

(4) A school district desiring to implement a plan other than those listed in Section 3 (1) (2) and (3) shall submit a

request for approval of such plan to the Assistant Superintendent for the Bureau of Instruction prior to implementing such plan.

Section 4. [3] A child who is five (5) years of age on or before December 31 following the opening of school may enter kindergarten.

[Section 4. (1) There shall be a minimum of thirty-five (35) square feet of floor space per child within the classroom. The requirements for heating, lighting, and ventilation shall be in accordance with the State Board of Education regulations. The classroom shall be located on the first floor to provide safety for children.]

[(2) Individual storage space shall be available for each child. The room shall provide adequate storage space.]

[(3) Drinking fountain, a sink of child height with warm and cold water, and toilet facilities shall be made as easily accessible as possible.]

Section 5. The program shall include desirable experiences in social living, physical development, emotional growth and stability, language arts, science, music, art, and creative activities. The program shall provide opportunities and experiences in accordance with each child's level of comprehension and maturation [rate of growth].

Section 6. The facilities shall be in compliance with the regulations of the Department of Education's Division of Buildings and Grounds.

[Section 6. There shall be an adequate amount of good equipment and consumable materials to provide for a well-balanced activity program for children, recognizing individual and group differences.]

JAMES B. GRAHAM,
Superintendent of Public Instruction

ADOPTED: April 11, 1978

RECEIVED BY LRC: April 21, 1978 at 1:25 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board for Elementary and Secondary Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

**EDUCATION AND ARTS CABINET
Department of Elementary and Secondary Education
Bureau of Instruction
(Proposed Amendment)**

704 KAR 20:020. Rank II equivalency.

RELATES TO: KRS 157.390, 161.030

PURSUANT TO: KRS 13.082, 156.070, 156.130, 156.160

NECESSITY AND FUNCTION: KRS 157.390 authorizes the State Board of Education to determine equivalent qualifications for the salary ranks. This regulation defines an equivalency for the Rank II salary classification.

Section 1. [(1)] The Planned Fifth Year Program re-

quired for the renewal of provisional teaching certificates shall be accepted as an equivalency for a Rank II classification under the Foundation Law and may be satisfied by any one (1) of the three (3) plans as described in the following [Plan I or Plan II as defined in this] sections.

Section 2. [(2)] *The Plan I fifth year program shall be the completion of a master's degree from a regionally accredited college or university.*

Section 3. [(3)] *The Plan II fifth year program shall consist of a program completed in accordance with the following guidelines.*

(1) [(a)] *The Plan II fifth year program shall be planned individually with each applicant by the teacher education institution which shall be an institution approved for offering programs leading to the standard teaching certificates.*

(2) [(b)] *The Plan II fifth year program shall consist of thirty-two (32) semester hours credit with an academic standing of no less than is required at the planning institution for the teacher education graduates and of the total program at least eighteen (18) semester hours must be earned at the planning institution; at least twelve (12) semester hours shall be graduate level course work; at least twelve (12) semester hours shall be professional education; and at least twelve (12) semester hours shall be from the area of the teacher's specialization.*

(3) [(c)] *Once the Plan II fifth year program has been planned with the individual, the planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college.*

(4) [(d)] *Course work earned by the applicant prior to planning the fifth year program may be evaluated for acceptance by the planning institution.*

(5) [(e)] *Credit earned by correspondence shall not apply toward the Plan II fifth year program.*

Section 4. (1) *The Plan III fifth year program shall include at least thirty-two (32) semester hours credit except that continuing education units and/or professional staff development units may be substituted under an equivalent formula for up to twelve (12) semester hours of the total program. Among the college credits there shall be included at least twelve (12) semester hours in professional education and six (6) semester hours from the area of the teacher's specialization. Furthermore, at least eighteen (18) semester hours credit must be earned at the planning institution and twelve (12) semester hours of the total program must be for graduate level credit.*

(2) *The Plan III fifth year program shall be planned by the teacher education institution individually with each applicant in terms of the position held by the applicant or in terms of a position anticipated by the applicant. Standard college credits earned by the applicant prior to planning the program shall be evaluated for possible acceptance by the planning institution; however, all preparation recorded as continuing education units or as professional staff development units must be planned and approved in advance for acceptance as a part of the Plan III fifth year program. The grade point standing for the college credit portion of the Plan III fifth year program shall be no less than that required at the planning institution for teacher education graduates. Once the Plan III fifth year program has been planned with the individual, the planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college. Credit earned by correspondence shall not apply toward the Plan III fifth year program.*

(3) *The continuing education unit as used in the Plan III fifth year program shall be the continuing education unit now in use by accredited colleges and universities and defined as ten (10) contact clock hours of participation in an organized professional experience under responsible sponsorship, capable direction, and qualified instruction. For purposes of the Plan III fifth year program the studies and experiences for continuing education units shall be planned in advance to insure relevance to the total program being planned with the applicant. Further guidelines as to the type of activities and experiences which may or may not be counted for this purpose shall be issued by the Superintendent of Public Instruction. For purposes of the Plan III fifth year program three (3) continuing education units shall be applied on the same basis as one (1) semester hour of college credit.*

(4) *The professional staff development unit as used in the Plan III fifth year program shall be defined as constituting a minimum of five (5) contact clock hours of participation in an approved continuing education experience. For purposes of the Plan III fifth year program three (3) professional staff development units shall be applied on the same basis as one (1) semester hour of college credit. The Superintendent of Public Instruction shall issue guidelines as to the type of activities and experiences which may or may not be counted for this purpose and he shall provide for a uniform system of evaluating the activities and experiences submitted for the awarding of professional staff development units and shall provide for a system of record keeping for purposes of the Plan III fifth year program.*

JAMES B. GRAHAM,

Superintendent of Public Instruction

ADOPTED: April 11, 1978

RECEIVED BY LRC: April 21, 1978

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Mr. Fred Schultz, Secretary, Kentucky State Board
for Elementary and Secondary Education, 17th Floor,
Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Board of Tax Appeals
(Proposed Amendment)

802 KAR 1:010. Rules of practice and procedure.

RELATES TO: KRS 131.345

PURSUANT TO: KRS 13.082, 131.345

NECESSITY AND FUNCTION: KRS 131.345 provides that "Appeals to the Kentucky Board of Tax Appeals shall be in accordance with rules prescribed by the Board." The following rules have been adopted in compliance with that authority.

Section 1. Appeals to the Board. (1) All appeals from rulings, orders or determinations of any state or county

agency shall be filed with the board by filing a complaint or petition of appeal with the board at its offices at Frankfort, Kentucky, within thirty (30) days from the receipt by any aggrieved party of the agency's ruling, order or determination.

(2) Except as provided in subsection (3) of this section, such appeal shall be filed in quintuplicate and shall contain a brief statement of the law or facts in issue and the petitioner's position as to the law or facts. Said appeal shall have attached thereto a copy of the final ruling, order or determination of the agency appealed from.

(3) All appeals from final rulings of a county Board of Assessment Appeals shall be appealed in like manner, except that such appeal shall be filed in triplicate.

Section 2. Hearings. (1) Hearings shall be held at the offices of the board at Frankfort, Kentucky, except that a case may be assigned for hearing elsewhere in the Commonwealth of Kentucky when deemed necessary to afford a taxpayer or interested party an opportunity to appear before the board with as little inconvenience and expense as practicable.

(2) All appeals shall be heard by the full board, provided that one (1) member thereof may be authorized to hear an individual appeal pursuant to order entered of record by the board.

(3) Appeals shall be assigned for hearing upon motion of any interested party or the board may, in its discretion, assign any appeal for hearing, having due regard for the convenience of the parties. Except where an appeal is assigned for hearing by agreement of the parties, all interested parties shall be given reasonable notice of a hearing date.

(4) *Parties to actions filed with this board may be represented at the hearings as follows:*

(a) *An individual may represent himself in hearings before the board;*

(b) *An individual who is not an attorney may not represent corporations or individuals before the board;*

(c) *An attorney who is not licensed to practice in Kentucky may practice before the board if he obtains local Counsel in compliance with RAP 3.030(b).* [Every hearing upon an appeal held before the board or one of its members shall be conducted in a summary manner. Opportunity will be given to the parties to introduce witnesses and to present either in person or by counsel the points in issue. Such hearing shall be conducted in such manner as to ascertain the substantial rights of the parties and to determine fairly and expeditiously the matters in issue.]

(5) All hearings shall be formally reported by the reporter for the board.

Section 3. Evidence. (1) The rules of evidence governing civil proceedings in the Commonwealth of Kentucky shall, insofar as practicable, govern hearings before the board.

(2) Evidence may be introduced by oral testimony at a hearing before the board or by deposition. The provisions of the Rules of Civil Procedure shall apply to the taking of depositions. No depositions shall be considered, unless, within ten (10) days, after submission of the appeal, it has been filed with the board; provided, however, that the board may, for good cause shown and upon motion filed within said ten (10) days grant an extension of time to file any deposition.

(3) The petitioner or appellant shall be required to complete his evidence in chief and so announce before respondent or appellee shall be required to introduce evidence,

unless otherwise ordered by the board.

(4) the parties to an appeal may stipulate the facts in issue in whole or in part. Said stipulation shall be reduced to writing and filed with the board. All parties are encouraged to stipulate facts whenever possible.

Section 4. Parties' failure to appear at hearing. (1) Where petitioner or appellant fails to appear at the hearing of his case, and no good cause is shown for his failure to appear, the case may be ordered dismissed for lack of prosecution by the board.

(2) Where the respondent or appellee fails to appear at the hearing of a case and no good cause is shown for his failure to appear, the board or any designated member thereof may proceed with the hearing of the case and it shall thereafter be submitted as provided by these rules.

Section 5. Appeal; when and how submitted. When all interested parties have announced through in presenting evidence or after all interested parties have had a reasonable opportunity to present evidence, the board may order the appeal to be submitted for a final ruling or order. Upon request of either party or upon the board's own motion, the order of submission may give the parties time within which to file briefs. Upon motion of any party and for good cause, the order of submission may be set aside and leave given to any party to take additional evidence.

Section 6. Briefs. Briefs shall be typewritten or printed and filed in quadruplicate with the board. A certification shall accompany any brief to the effect that copies have been served upon all interested parties as provided by the Rules of Civil Procedure. Mimeograph or multigraph copies will be accepted in lieu of typewritten copies. All copies of the brief must be clearly legible and double spaced except for quotations on paper eight and one-half (8½) inches wide and eleven (11) [thirteen (13)] inches long.

Section 7. Motions. The original and three (3) copies [copy] of any motion shall be filed with the board and said motion shall be accompanied by a certification that copies have been served on all interested parties as required by the Rules of Civil Procedure.

Section 8. Subpoenas. Any member of the board, on the request in writing of any party to the appeal before it, or his attorney, shall issue subpoenas requiring the attendance of witnesses and the giving of testimony and subpoena duces tecum requiring the production of any returns, books, papers, documents, correspondence, and other evidence pertaining to the matter under inquiry in accordance with the Rules of Civil Procedure.

Section 9. Records and Costs. (1) No record filed with the board is subject to withdrawal by any person, except on order of the board.

(2) Expenses of reporting hearings shall be paid by the state from the appropriation of the board. If any party desires to have the evidence at a hearing transcribed, he shall cause the reporter to prepare one (1) original transcript to be filed with the board and such additional copies as said party may desire. The party requesting a transcript of evidence shall pay for the original and any requested copy or copies. [in accordance with the rates established by the Kentucky Revised Statutes.] Any other interested party may request a copy or copies of said

transcript and shall pay for the same. [in accordance with the rates established by the Kentucky Revised Statutes.]

JESSEL O. MOORE, Chairman

ADOPTED: May 8, 1978

APPROVED: MIKE HELTON, Secretary

RECEIVED BY LRC: May 11, 1978 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Kentucky Board of Tax Appeals, Twilight Trail,
Building A-3, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:090. Stimulants and drugs.

RELATES TO: KRS 230.630(1), (3), 230.640, 230.700

PURSUANT TO: KRS 13.082, 230.630(3), (4), (7)

NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to provide for the testing of horses for stimulants and drugs and the regulation of stimulants and drugs.

Section 1. (1) At every meeting except as stated herein where pari-mutuel wagering is permitted, the winning horse in every heat and/or race and the winning horse and second place horse in every perfecta race shall be subjected to a urine test for the purpose of determining thereby the presence of any drug, stimulant, sedative, depressant, or medicine. In addition, the judges at any meeting may order any other horse in any heat or race to be subjected to the urine test or any other test for the purpose of determining thereby the presence of any drug, stimulant, sedative, depressant or medicine. Also, the judges may order any horse in a race to be subjected to a urine, blood and/or saliva test. At all extended pari-mutuel meetings at least fifty (50) percent of the horses subjected to a urine test shall be given a blood test. Such horses to be selected by the presiding judge by lot. Such tests shall be made only by qualified veterinarians and by laboratories designated by the commission. In addition to the above, the winning horse and second horse in every heat or dash of a race at any track with a total purse in excess of \$5,000 shall be subjected to both blood and a urine test. However, such blood test shall be counted in determining the fifty (50) percent required above.

(2) The commission may, in its discretion, or at the request of a member, authorize or direct a saliva, blood, urine or other test of any horse racing at any meeting.

Section 2. (1) During the taking of the blood and/or urine sample by the veterinarian, the owner, trainer or authorized agent may be present at all times. Samples so taken shall be placed in two (2) containers and shall im-

mediately be sealed and the evidence of such sealing indicated thereon by the signature of the representative of the owner or trainer. One part of the sample is to be placed in a depository under the supervision of the presiding judge and/or any other agency the commission may designate to be safeguarded until such time as the report on the chemical analysis of the other portion of the split sample is received.

(2) Should a positive report be received, an owner or trainer shall have the right to have the other portion of the split sample inserted in with a subsequent group being sent for testing or may demand that it be sent to another chemist for analysis, the cost of which will be paid by the party requesting the test.

Section 3. (1) Whenever there is a positive test finding the presence of any drug, stimulant, sedative or depressant present, in the post-race test, the laboratory shall immediately notify the presiding judge who shall immediately report such findings to the commission.

(2) When a positive report is received from the laboratory by the presiding judge, the persons held responsible shall be notified and a thorough investigation shall be conducted by or on behalf of the judges. A time shall be set by the judges for a hearing to dispose of the matter. The time set for the hearing shall not exceed four (4) racing days after the responsible persons were notified. The hearing may be continued, if in the opinion of the judges, circumstances justify such action.

(3) Should the chemical analysis of saliva, blood, urine or other sample of the post-race test taken from a horse indicate the presence of a forbidden narcotic, stimulant, depressant, or local anesthetic, it shall be considered prima facie evidence that such has been administered to the horse. [The trainer and any other person or persons who may have had the care of, or been in attendance of the horse, or are suspected of causing such condition shall be immediately stopped from participating in racing by the judges and shall remain inactive in racing pending the outcome of a hearing.]

(4) Upon receipt of written notification of a positive test finding, the judges shall cause the immediate suspension of the horse from further participation in racing pending the outcome of a hearing.

Section 4. Any person or persons who shall administer or influence or conspire with any other person or persons to administer to any horse any drug, medication, stimulant, depressant, narcotic or hypnotic to such horse within forty-eight (48) hours of his race, shall be subject to penalties provided in this rule.

Section 5. Whenever the post-race test or tests prescribed in Section 1 disclose the presence in any horse of any drug, stimulant, depressant or sedative, in any amount whatsoever, it shall be presumed that the same was administered by the person or persons having control and/or care and/or custody of such horse with the intent thereby to affect the speed or condition of such horse and the result of the race in which it participated.

Section 6. A trainer shall be responsible at all times for the condition of all horses trained by him. No trainer shall start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable

care he might have known or have cause to believe, that the horse has received any drug, stimulant, sedative, depressant, medicine or other substance that could result in a positive test. Every trainer must guard or cause to be guarded each horse trained by him in such manner and for such period of time prior to racing the horse so as to prevent any person not employed by or connected with the owner or trainer from administering any drug, stimulant, sedative, depressant, or other substance resulting in a post-race positive test.

Section 7. Any owner, trainer, driver or agent of the owner, having the care, custody and/or control of any horse who shall refuse to submit such horse to a saliva test or other tests as herein provided or ordered by the judges shall be guilty of a violation of this rule. Any horse that refuses to submit to a pre-race blood test shall be required to submit to a post-race saliva and urine test regardless of its finish.

Section 8. Any horse in which an offense was detected under any section of this rule shall be placed last in the order of finish and all winnings of such horse shall be forfeited and paid over to the commission for redistribution among the remaining horses in the race entitled to same. No such forfeiture and redistribution of winnings shall affect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, when such distribution of pools is made upon the official placing at the conclusion of the heat or dash.

Section 9. Pre-Race Blood Test. Where there is a pre-race blood test which shows that there is an element present in the blood indicative of a stimulant, depressant or any unapproved medicament, the horse shall immediately be scratched from the race and an investigation conducted by the officials to determine if there was a violation of Section 4.

Section 10. Hypodermic Syringe Prohibited. No person except a licensed veterinarian approved by the commission shall have within the grounds of a licensed harness race track in or upon the premises which he occupies, or has a right to occupy, or in his personal property or effects any hypodermic syringe, hypodermic needle, or other devices which can be used for the injection or other infusion into a horse of a drug, stimulant or narcotic. Every licensed harness racing association upon the grounds of which horses are lodged or kept, is required to use all reasonable effort to prevent violation of this rule.

Section 11. (1) All veterinarians practicing on the grounds of an extended pari-mutuel meeting shall keep a log of their activities on a form provided by the commission and shall submit a copy of it to the commission office of the track each day of a race meeting. The log shall include:

- (a) Name of horse.
- (b) Nature of ailment.
- (c) Type of treatment.
- (d) Date and hour of treatment.

(2) It shall be the responsibility of the veterinarian to report to the presiding judge any internal medication

given by him by injection or orally to any horse after he has been declared to start in any race.

Section 12. (1) Any veterinarian practicing veterinary medicine on a race track where a race meeting is in progress or any other person using a needle or syringe shall use only one-time disposable type needles and a disposable needle shall not be reused. The disposable needles shall be kept in his possession until disposed of by him off the track.

(2) No veterinarian, assistant veterinarian or employee of same shall leave a needle or syringe with anyone on a race track where a race meeting is in progress except upon written authorization from the commission.

Section 13. The penalty for violation of any sections of this rule, unless otherwise provided, shall be a fine of not to exceed \$5,000, suspension for a fixed or indeterminate time, or both; or expulsion.

CARL B. LARSEN, Deputy Commissioner

ADOPTED: April 21, 1978

APPROVED:

MIKE HELTON, Secretary

RECEIVED BY LRC: May 4, 1978 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Betty Burton, Acting Executive Secretary, Kentucky
Harness Racing Commission, 369 Waller Avenue, Lexington, Kentucky 40504.

DEPARTMENT FOR HUMAN RESOURCES

Bureau for Health Services
(Proposed Amendment)

901 KAR 1:020. Schedule II substances.

RELATES TO: KRS Chapter 218A

PURSUANT TO: KRS 13.082, 194.050, 211.090

NECESSITY AND FUNCTION: KRS 218A.020 authorizes the Department for Human Resources to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.060 and applicable federal regulations the Department for Human Resources designates the substances set forth in this regulation as Schedule II controlled substances.

Section 1. Depressants. The Department for Human Resources hereby designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: Methaqualone (2-methyl-3-o-tolyl-4 (3H)-quinazolinone).

Section 2. Reschedule of Certain Barbiturate Acid Derivatives to "Schedule II" Controlled Substances; Exceptions. The Department for Human Resources hereby reschedules the following barbituric acid derivatives from Schedule III to Schedule II controlled substances, viz:

- (1) Amobarbital;
- (2) Secobarbital;
- (3) Pentobarbital;

(4) Provided; however, that any compound, mixture or preparation containing amobarbital, secobarbital and pentobarbital or any salt thereof and one or more other active medicinal ingredient(s) which is not a controlled substance shall be in "Schedule III."

(5) Provided; further, that any suppository dosage form containing amobarbital, secobarbital and pentobarbital or any salt thereof which has been approved by the United States Food and Drug Administration for marketing only as a suppository shall be in "Schedule III."

Section 3. Reschedule of Phencyclidine to "Schedule II" controlled substances. The Department for Human Resources hereby reschedules phencyclidine from Schedule III to Schedule II controlled substances.

Section 4. Placement into Schedule II of 1-Piperidinocyclohexanecarbonitrile and 1-Phenylcyclohexylamine, immediate precursors to Phencyclidine. The Department for Human Resources hereby designates 1-Piperidinocyclohexanecarbonitrile and 1-Phenylcyclohexylamine, immediate precursors, to Phencyclidine as "Schedule II" controlled substances.

BURNICE RANSDELL, JR., Acting Commissioner
PETER D. CONN, Secretary

ADOPTED: April 27, 1978

RECEIVED BY LRC: May 11, 1978 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, 275 E. Main Street,
Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(Proposed Amendment)

901 KAR 5:050. Certified copies of certificates; fee.

RELATES TO: KRS Chapter 213

PURSUANT TO: KRS 13.082, 194.050, 211.090

NECESSITY AND FUNCTION: KRS 213.190 directs the Department for Human Resources to set a reasonable fee by regulation not to exceed *four* [two] dollars (\$4) [(\$2)] for each certified copy issued or search of the files if no certificate is found.

Section 1. Fees for certified Copies of Certificates. An applicant for a certified copy of the record of any birth, death, marriage, divorce or other record registered with the Director of Vital Statistics, Department for Human Resources, shall pay a fee of *four* [two] dollars (\$4) [(\$2)] for a copy thereof or search of the files if no copy is found.

BURNICE RANSDELL, Acting Commissioner
PETER D. CONN, Secretary

ADOPTED: April 27, 1978

RECEIVED BY LRC: May 11, 1978 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, 275 E. Main Street,
Frankfort, Kentucky 40601.

Proposed Regulations

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:032. Emergency procedures for students suffering disaster related losses.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785

PURSUANT TO: KRS 13.082, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This regulation permits modification of standard application procedures for students suffering disaster related losses.

Section 1. Notwithstanding the other provisions of Title 11, Chapter 5, the authority may establish special procedures and forms for use by students suffering disaster related losses to determine eligibility for grants administered by the authority. Such procedures may include, but not necessarily be limited to, modifications of application priority filing dates, required base year income data, disaster related asset losses, and other disaster related changes in educational enrollment plans.

PAUL P. BORDEN, Executive Director

ADOPTED: April 20, 1978

RECEIVED BY LRC: May 10, 1978 at 10:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Paul P. Borden, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET Department of Revenue

103 KAR 7:020. Release of funds by financial institutions.

RELATES TO: KRS 140.250, 140.990

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 140.250 requires financial institutions to notify the Department of Revenue at least thirty (30) days in advance of releasing to a personal representative or beneficiary any portion of a decedent's account and to withhold a sufficient amount to pay any applicable inheritance tax. The Department of Revenue may relieve the institution of this obligation by giving written consent for the release or transfer of the property. This regulation provides a procedure whereby a personal representative or beneficiary may obtain a limited portion of the funds in such account(s) for the purpose of maintaining a standard of living or to pay creditors without the necessity of obtaining prior written consent from the department in each instance. This will help beneficiaries who are in need of immediate cash for current expenses and will benefit financial institutions through improved customer relations without affecting the department's ability to collect any inheritance tax owed on such property.

Section 1. Financial institutions having an account(s), either individually or jointly held, in the name of a decedent are hereby authorized to release, at any time during the first three (3) months after the date of death, up to \$2,500 of the amount in the account(s) to a person(s) entitled to such account(s).

Section 2. Financial institutions must provide written notice of the release to the Department of Revenue on a form provided by the department within thirty (30) days after release of such funds. The notice shall contain:

(1) The name of the decedent, date of death, name and address of person(s) to whom the account(s) is released, name of joint surviving co-owner(s), if any, the amount released, and total amount in such account(s) at the date of death.

(2) Certification on the notice by the person to whom the funds are released that neither he nor any other representative of the deceased has received from any other financial institution, together with the funds released by the named institution, an amount which exceeds \$2,500.

Section 3. Upon issuance of the properly executed written notice, as provided in Section 2 of this regulation, the financial institution shall be relieved of the inheritance tax liability and penalties imposed by KRS 140.250 and 140.990.

MAURICE P. CARPENTER,
Commissioner of Revenue

ADOPTED: April 25, 1978.

APPROVED: JAMES E. GRAY, Secretary

RECEIVED BY LRC: April 26, 1978 at 9:50 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex Building, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET Department of Revenue

103 KAR 35:011. Repeal of 103 KAR 35:010.

RELATES TO: KRS 143.010

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: The 1978 General Assembly amended the Coal Severance Tax Law to include "processing" in the tax base. This legislation also defined several terms which were previously defined in Regulation 103 KAR 35:010. Therefore, the regulation is now obsolete and should be repealed.

Section 1. 103 KAR 35:010 is hereby repealed.

MAURICE P. CARPENTER, Commissioner

ADOPTED: May 10, 1978

APPROVED: JAMES E. GRAY, Secretary

RECEIVED BY LRC: May 11, 1978 at 8:20 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

**EXECUTIVE DEPARTMENT FOR FINANCE
AND ADMINISTRATION**

200 KAR 4:015. Capital projects.

RELATES TO: KRS Chapter 42

PURSUANT TO: KRS 42.340

NECESSITY AND FUNCTION: Pursuant to the authority vested in the Secretary of the Executive Department for Finance and Administration by KRS 42.340, this regulation establishes procedures relating to submission and approval of proposed capital projects, the expenditure of moneys from the Economic Aid Fund, and title to real property and to capital projects in the coal producing counties.

Section 1. All project proposals shall be submitted on forms prescribed by the Executive Department for Finance and Administration, and no proposal shall be considered officially submitted until complete information and documentation required has been received by the Department for Local Government.

Section 2. Each proposal submitted by an economic aid board shall be accompanied by the following documentation:

- (1) Copy of the notice of the public meeting at which the project was proposed, with the date of each of the three (3) publications.
- (2) Minutes of the public meeting containing the proposal of the project and such other projects as were proposed.
- (3) Minutes of the economic aid board meeting showing the order of priority established for projects.
- (4) Statement that the beneficiary agency is a county or an incorporated city; or
 - (a) That it is a special district with a copy of the court order, containing a reference to the authorizing statute, by which the district was established; or
 - (b) That it is an agency created under the Interlocal Cooperation Act, with a copy of the executed agreement approved by the Attorney General; or
 - (c) That it is a combination of any of the foregoing, with a copy of the agreement creating the combination; or
 - (d) That it is a non-profit corporation organized for a public purpose and performing governmental functions and services, with a copy of the official articles of incorporation and by-laws.
- (5) Statement by the chief executive officer of the beneficiary agency that such agency is capable of administering the project for its estimated life expectancy.
- (6) If funds from other sources are to be used for the project, the availability of such funds shall be shown by:
 - (a) Resolution, minutes of legislative body, or adopted budget of a local government.
 - (b) Copy of grant or loan award notice from a federal or state agency, or a letter from the awarding agency which states the amount of funds and date of availability that such grant or loan will be made.
- (7) Itemized cost estimates, prepared within thirty (30) days prior to the date of submission, by a licensed architect or engineer; or a price quote on each item, obtained within thirty (30) days prior to the date of submission, from one or more vendors or contractors.
- (8) Statement of assurances by the chief executive officer of the beneficiary agency that all applicable laws and regulations have been met.
- (9) Attestation of county clerk that written assurances

are recorded in the office of the clerk of the county in which the project is located.

Section 3. (1) In the event the capital project involves improvement or renovation of real property, the beneficiary agency shall submit the following documentation establishing the right to use and possession for the life of the project:

(a) Statement by licensed attorney which sets forth the present holder of title, the book and page number of the deed by which the holder received title and any liens, mortgages or claims against the property.

(b) If the beneficiary agency does not hold fee simple title to the realty, copy of lease, easement or other grant of use or possession, and statement of estimated useful life of project and basis for such estimate.

(2) In the event the capital project involves the acquisition of real property, the beneficiary agency shall submit the following documentation to establish that a marketable title, free of encumbrances, will be acquired:

(a) Title report prepared by licensed attorney in a form acceptable to the Attorney General.

(b) Survey of realty by a registered land surveyor.

(c) Appraisal by one or more qualified appraisers.

Section 4. (1) In the event a direct grant is made, the beneficiary agency shall maintain and furnish upon request the following documentation:

(a) Proof of advertisement for bids, indicating the date or dates of publication.

(b) Certification by the chief executive officer of the beneficiary agency that all bids received were opened at the time and place stated in the advertisement and that the tabulation is true and correct as stated.

(c) Copy of the letter awarding each contract, indicating the date of such award.

(d) Copy of each executed contract and any change order to the contract.

(e) Specifications upon which bid and award was based.

(2) In the event the Executive Department for Finance and Administration delegates award of contracts to a beneficiary agency, the beneficiary agency shall submit all documents applicable to state capital improvement projects and public works contracts as required by the Executive Department for Finance and Administration.

Section 5. (1) Except for direct grants, a project may be given conditional approval pending submission of any documentation or other information required by these regulations, but final payment shall not be made on any project until all documentation has been submitted.

(2) The Secretary of the Executive Department for Finance and Administration may withdraw funding from any project at any time he determines state or federal laws are not being followed in the administration of the project.

Section 6. 200 KAR 4:020 is hereby repealed.

RUSSELL McCLURE, Secretary

ADOPTED: May 15, 1978

RECEIVED BY LRC: May 15, 1978 at 9:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Russell McClure, Secretary, Executive Department
for Finance and Administration, New Capitol Annex,
Frankfort, Kentucky 40601.

**EXECUTIVE DEPARTMENT FOR FINANCE
AND ADMINISTRATION**

**Bureau of Administrative Services
Division of Accounts**

200 KAR 8:020. Reimbursement to law enforcement officers for certain expenses.

RELATES TO: KRS 29A.180

PURSUANT TO: KRS 29A.180

NECESSITY AND FUNCTION: KRS 29A.180, as amended by the 1978 General Assembly, requires the Executive Department for Finance and Administration to promulgate regulations establishing the method of reimbursing law enforcement officers for expenses incurred for sequestered jurors, for transporting jurors or other authorized persons to views of the scene, for providing specialized security personnel, equipment, or services to the court.

Section 1. The sheriff, city police or city marshal, as appropriate, shall be responsible for meals, housing, and other incidental needs of grand jurors and petit jurors in circuit court and in district court when the jurors are kept overnight or otherwise sequestered when ordered to do so by the judge of the court for which the jurors were summoned. Each officer, upon presenting the Executive Department for Finance and Administration an order of the court requiring such service, shall be reimbursed as follows:

(1) For the actual cost of meals, tips, and delivery service upon the presentation of an invoice for such expense. This includes only those meals for jurors and does not include meals for the officer or any guards employed.

(2) For the actual cost of housing jurors upon the presentation of an invoice for such expense. This includes only housing for jurors and does not include housing for the officer or any guards employed.

(3) For any other expense incurred in service to sequestered grand or petit jurors upon the presentation of an invoice for such expense. This includes only those expenses for jurors and does not include expenses for the officer or any guards employed.

Section 2. The Sheriff, city police or city marshal, as appropriate, shall be responsible for the transportation of jurors and other authorized persons to views of the scene or other locations authorized by the court pursuant to KRS 29A.310. In criminal cases, cases conducted under the Eminent Domain Act of Kentucky, and civil cases in which the Commonwealth requests the viewing, each officer, upon presenting the Executive Department for Finance and Administration an order of the court requiring such service, shall be reimbursed for each vehicle used at the rate set forth in KRS 64.070 for transporting a prisoner to the penitentiary.

Section 3. The sheriff, city police or city marshal, as appropriate, shall be responsible for providing any specialized security personnel, equipment and services which the judge, with the consent of the Chief Justice shall deem necessary for the conduct of a trial in which the judge believes that special security precautions are necessary or desirable. Each officer, upon presenting the Executive Department for Finance and Administration an order of the court requiring such service and a copy of any correspondence of the Chief Justice consenting to such ser-

vice, shall be reimbursed as follows:

(1) For specialized security personnel the rate authorized by KRS 64.348 for court attendance.

(2) For equipment and services requested by the judge, a reasonable rate to be fixed by the judge and entered upon the order book of the court.

RUSSELL McCLURE, Secretary

ADOPTED: April 17, 1978

RECEIVED BY LRC: April 18, 1978 at 4 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Russell R. McClure, Secretary, Executive Department for Finance and Administration, Capitol Annex, Frankfort, Kentucky 40601.

**EXECUTIVE DEPARTMENT FOR FINANCE
AND ADMINISTRATION**

200 KAR 9:010. Approval of projects; expenditure of funds; title.

RELATES TO: KRS Chapter 42

PURSUANT TO: KRS 42.360

NECESSITY AND FUNCTION: Pursuant to the authority vested in the Secretary of the Executive Department for Finance and Administration by KRS 42.360, this regulation establishes procedures relating to submission and approval of proposed capital projects, the expenditure of moneys from the Area Development Fund and title to real property and to capital projects in the Area Development Districts.

Section 1. (1) The board of directors of each area development district shall select from among capital projects proposed by eligible beneficiary agencies, projects consistent with goals, objectives and priorities of adopted local or regional development plans and shall submit recommended projects to the Department for Local Government for approval by the Executive Department for Finance and Administration.

(2) The board of directors shall give priority consideration to proposed projects which have funds allocated in addition to area development funds and shall consider need and long-term benefits in selection of projects.

(3) Boards of directors of two or more area development districts may propose joint capital projects to be financed by funds allocated to each participating area development district.

Section 2. All project proposals shall be submitted on forms prescribed by the Executive Department for Finance and Administration, and no proposal shall be considered officially submitted until complete information and documentation required has been received by the Department for Local Government.

Section 3. Each proposal submitted by an area development district shall be accompanied by the following documentation:

(1) Minutes of area development district board meeting specifying project approval and amount of area develop-

ment funds allocated to the project;

(2) Statement that the beneficiary agency is a county or an incorporated city; or

(a) That it is a special district with a copy of the court order, containing a reference to the authorizing statute, by which the district was established; or

(b) That it is an agency created under the Interlocal Cooperation Act, with a copy of the executed agreement approved by the Attorney General; or

(c) That it is a combination of any of the foregoing, with a copy of the agreement creating the combination; or

(d) That it is a non-profit corporation organized for a public purpose and performing governmental functions and services, with a copy of the official articles of incorporation and by-laws.

(3) Statement by the chief executive officer of the beneficiary agency that such agency is capable of administering the project for its estimated life expectancy.

(4) If funds from other sources are to be used for the project, the availability of such funds shall be shown by:

(a) Resolution, minutes of legislative body or adopted budget of a local government.

(b) Copy of grant or loan award notice from a federal or state agency, or a letter from the awarding agency which states the amount of funds and date of availability that such grant or loan will be made.

(5) Itemized cost estimates, prepared within thirty (30) days prior to the date of submission, by a licensed architect or engineer; or a price quote on each item obtained within thirty (30) days prior to the date of submission from one or more vendors or contractors.

(6) Statement of assurances by the chief executive officer of the beneficiary agency that all applicable laws and regulations have been met.

(7) Attestation of county clerk that written assurances required by KRS 42.355 are recorded in the office of the clerk of the county in which the project is located.

Section 4. (1) In the event the capital project involves improvement or renovation of real property, the beneficiary agency shall submit the following documentation establishing the right to use and possession for the life of the project:

(a) Statement by licensed attorney which sets forth the present holder of title, the book and page number of the deed by which the holder received title and any liens, mortgages or claims against the property.

(b) If the beneficiary agency does not hold fee simple title to the realty, copy of lease, easement or other grant of use or possession, and statement of estimated useful life of project and basis for such estimate.

(2) In the event the capital project involves the acquisition of real property, the beneficiary agency shall submit the following documentation to establish that a marketable title, free of encumbrances, will be acquired:

(a) Title report prepared by a licensed attorney in a form acceptable to the Attorney General.

(b) Survey of realty by a registered land surveyor.

(c) Appraisal by one or more qualified appraisers.

Section 5. (1) In the event a direct grant is made the beneficiary agency shall maintain and furnish the following documentation:

(a) Proof of advertisement for bids, indicating the date or dates of publication.

(b) Certification by the chief executive officer of the beneficiary agency that all bids received were opened at the time and place stated in the advertisement and that the

tabulation is true and correct as stated.

(c) Copy of the letter awarding each contract, indicating the date of such award.

(d) Copy of each executed contract and any change orders to the contract.

(e) Specifications upon which bid and award was based.

(2) In the event the Executive Department for Finance and Administration delegates award of contracts to a beneficiary agency, the beneficiary agency shall submit all documents applicable to state capital improvement projects and public works contracts as required by the Executive Department for Finance and Administration.

Section 6. (1) Except for direct grants, a project may be given conditional approval pending submission of any documentation or other information required by these regulations, but final payment shall not be made on any project until all documentation has been submitted.

(2) The Secretary of the Executive Department for Finance and Administration may withdraw funding from any project at any time he determines state or federal laws are not being followed in the administration of the project.

RUSSELL McCLURE, Secretary

ADOPTED: May 15, 1978

RECEIVED BY LRC: May 15, 1978 at 9:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Russell McClure, Secretary, Executive Department
for Finance and Administration, New Capitol Annex,
Frankfort, Kentucky 40601.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION

Division of Occupations and Professions
Kentucky Board of Optometric Examiners

201 KAR 5:035. Advertising.

RELATES TO: KRS 320.300(3), 438.065

PURSUANT TO: KRS 13.082, 320.240

NECESSITY AND FUNCTION: KRS 320.300(3) prohibits advertisement of the price of visual aid glasses and other matters relating to the sale of visual aid glasses. In view of court decisions declaring statutory prohibitions against price advertising unconstitutional, particularly the case of *Consumer Association of Kentucky, Inc. v. The Kentucky Board of Optometric Examiners*, decided by the U. S. District Court for the Eastern District of Kentucky, on November 1, 1977, the following regulation is adopted.

Section 1. Advertising which is informational and reasonable is permitted, but is limited as follows:

(1) To informing the public of the availability of visual aid services and materials;

(2) Publication is permitted only in newspapers and periodicals of general circulation to the public; telephone directory pages; city, suburban and county directories; professional directories; no radio or television advertising will be permitted;

(3) Advertisement of fixed prices or a stated range of prices, including terms of credit or payment, for routine

professional services or uniform products or materials, provided such advertisement clearly states whether additional charges may be incurred for related services which may be required in individual cases;

(4) All advertisements for visual aid glasses alone shall clearly state: "does not include eye examination."

Section 2. (1) In advertising a price for an eye examination, a minimum examination must be performed for the price stated; the required minimum eye examination to be performed includes the following:

- (a) Complete case history (ocular, physical, occupational, medical, generic and other pertinent information);
 - (b) Chief ocular complaint;
 - (c) Aided and unaided visual acuity;
 - (d) External examination (eye, ad nexa);
 - (e) Internal ophthalmoscopic examination (media, lens, fundus, etc.);
 - (f) Ocular motility;
 - (g) Neurological integrity;
 - (h) Static retinoscopy and far point subjective;
 - (i) Near point subjective;
 - (j) Test of accommodation and convergence and binocular coordination at far and near;
 - (k) For adults over thirty-five (35), tonometry;
 - (l) Writing of the prescription, if applicable.
- (2) In addition to the above, the minimum eye examination for contact lenses shall include the following:
- (a) Biomicroscopic examination;
 - (b) Flourescein examination;
 - (c) Diagnostic evaluation (for soft lenses).

Section 3. The price advertised for contact lenses must include re-examination and re-evaluations within the following periods of time:

- (1) Hard lenses: three (3) months;
- (2) Soft lenses: six (6) months.

Section 4. (1) The advertisement of eye glass lenses shall include the following information:

- (a) Type (single vision, bifocal, trifocal, variable focals, and, if multifocal, specific type; Aphakic lenses shall be further described as lenticular aspheric, lenticular non-aspheric, full field aspheric, or full field non-aspheric);
 - (b) Power range (whether first division or low powers; second division of medium powers, third division or moderately high powers);
 - (c) Material, whether glass or plastic;
 - (d) Manufacturer's name;
 - (e) Color, whether white, tinted or photochromic.
- (2) Advertisement of contact lenses shall include the following information:
- (a) Type, whether hard or soft;
 - (b) Manufacturer's name (soft lenses only);
 - (c) In price advertisements of contact lens if eye examination and doctor's charge for supervision and follow-up services are not included, the advertisement must so state clearly and plainly.
- (3) Advertisement of eye glass frames shall include the following information:
- (a) Type, name or number of frame;
 - (b) Material, whether plastic, metal (kind of metal), or combination of metal or plastic (composition of metal);
 - (c) Name of manufacturer;
 - (d) Advertisement must state whether dispensing fee is included.
- (4) Advertising which is permitted under this regulation

is limited to advertising which is in the public interest and which is not prohibited by Section 5 below.

Section 5. Advertising which is not in the public interest and which is prohibited shall include, but is not limited to, advertising that:

- (1) Is false, fraudulent, deceptive, misleading, sensational, flamboyant, unfair or self-laudatory;
- (2) Offers optometric services or visual aid materials at a price designed to create a market or demand for unnecessary services or materials or to have a prohibitive effect on the dispensing of services or materials by other dispensers or suppliers; nor shall advertised prices for optometric services or materials be effective for less than a ninety (90) day period from the date advertised;
- (3) Represents an optometrist as a specialist in any optometric field unless that optometrist has been certified by a certifying board approved by the Kentucky Board of Optometric Examiners, and has furnished proof of such certification to the board's satisfaction;
- (4) Offers visual aid materials at a discount or as a premium for the purchase of any article of merchandise;
- (5) Offers or represents any type of visual care services as being superior to any others;
- (6) Represents intimidation or undue pressure;
- (7) Uses testimonials;
- (8) Guarantees any service or that satisfaction or cure will result from any service;
- (9) Offers gratuitous services or discounts in connection with professional services, but this clause shall not be construed to prohibit the negotiation of fees between optometrists and patients or prohibit the rendering of professional services for which no fee is charged;
- (10) Claiming or using any secret or special method of treatment which the licensee refuses to divulge to the State Board of Optometric Examiners;
- (11) Uses coded or special names for visual material or services that have an established trade name;
- (12) Uses art work or photographs relating to professional services;
- (13) Is for the sole purpose of patient or customer solicitation;
- (14) Uses either the media of radio or television.

HENRY K. LEADINGHAM, O. D., President

ADOPTED: February 28, 1978

APPROVED: RUSSELL McCLURE, Secretary

RECEIVED BY LRC: April 20, 1978 at 2:45 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Dr. Edward H. Gersh, Secretary-Treasurer, Kentucky Board of Optometric Examiners, 1706 Sutherland Drive, Louisville, Kentucky 40205.

**EXECUTIVE DEPARTMENT FOR FINANCE
AND ADMINISTRATION
Division of Occupations and Professions
State Board of Podiatry**

201 KAR 25:011. Approved schools; licensing examination, fees.

RELATES TO: KRS 311.420

PURSUANT TO: KRS 311.410(4)

NECESSITY AND FUNCTION: KRS 311.420 requires all persons engaging in the practice of podiatry in the State of Kentucky to be licensed by the State Board of Podiatry. KRS 311.420 provides that each applicant shall submit to an examination conducted by the board. This regulation sets out the procedures to be followed in obtaining an application, the fees to be charged and the procedures relating to the examination and issuance of a license to practice podiatry in this state.

Section 1. (1) The board recognizes the following schools or colleges of podiatry as having those standards and requirements adequate to comply with the provisions of KRS 311.420(1)(d). Those schools and colleges are as follows:

(a) California College of Podiatric Medicine, 1770 Eddy Street, San Francisco, California 94115.

(b) Illinois College of Podiatric Medicine, 1001 N. Dearborn Street, Chicago, Illinois 60610.

(c) Pennsylvania College of Podiatric Medicine, Race and Eighth Streets, Philadelphia, Pennsylvania 19107.

(d) New York College of Podiatric Medicine, 53 East 124th Street, New York, New York 10035.

(e) Ohio College of Podiatric Medicine, 10515 Carnegie Avenue, Cleveland, Ohio 44106.

(2) The board will evaluate the academic standards of schools and colleges of podiatry desiring to be approved by the board following receipt by the board of applications for approval from said schools or colleges.

Section 2. All applications for examination mentioned herein shall be submitted on application forms prescribed and provided by the board, accompanied by such evidence, statements, or documents as therein required, and shall be filed with the board at its principal office within the times prescribed herein.

(1) Every applicant, eligible to take the examination pursuant to the provisions of KRS 311.420, must submit an application to the secretary of the board at least thirty (30) days prior to the date of the examination.

(2) The fee for the examination shall be the sum of sixty dollars (\$60) and must be paid at the time the application for examination is filed with the board. The sum shall be payable by certified check, cashier's check or postal money order.

(3) In order for the applicant to successfully pass the examination he must receive an average of not less than seventy-five (75) percent on the entire examination and not less than seventy (70) percent on each subject.

(4) Any applicant who fails to attain a passing score as required by the board may apply to the board for re-examination by submitting another application to the secretary of the board at least thirty (30) days prior to the date of the next examination.

(5) If the applicant has failed to attain a score of at least seventy (70) percent in one (1) or two (2) of the subjects, but shall have attained an average of seventy-five (75) percent or better on the total examination, then he may only

be re-examined on the subject or subjects in which he failed to attain a score of at least seventy (70) percent.

(6) The fee for re-examination in one (1) or two (2) subjects shall be twenty-five dollars (\$25) and the fee for re-examination for the total examination shall be fifty dollars (\$50).

Section 3. Examinations shall be held at such times and places as shall be determined by the board. A schedule of the dates, time and place of the examination shall be mailed to each applicant whose application is accepted by the board.

Section 4. The board shall not refund the examination fee except where good and sufficient cause for refunding all or a portion of the fees are shown to the board within a reasonable time prior to the date of the examination.

RUPERT E. STIVERS, President

ADOPTED: April 13, 1978.

APPROVED: RUSSELL McCLURE, Secretary

RECEIVED BY LRC: May 11, 1978 at 2:45 p.m.

SUBMIT COMMENTS OR REQUEST FOR HEARING TO: Dr. C. A. Nava, 110 North Hubbard Lane, Louisville, Kentucky 40237.

**EXECUTIVE DEPARTMENT FOR FINANCE
AND ADMINISTRATION
Division of Occupations and Professions
State Board of Podiatry**

201 KAR 25:021. Annual renewal notice for licenses, fees.

RELATES TO: KRS 311.450

PURSUANT TO: KRS 311.410(4)

NECESSITY AND FUNCTION: KRS 321.450 requires the board to send notices to all podiatrists licensed by this board to their last known address on or before June 1 of each year, advising them that the annual license renewal fee is due on or before July 1 of each year. This regulation requires the mailing of an annual renewal notice to all licensed podiatrists and requires all licensed podiatrists to complete the annual renewal notice and return it, along with the annual renewal fee to the board. It further requires all licensed podiatrists to keep the board apprised of the current address of the licensee.

Section 1. The State Board of Podiatry shall on or before June 1 of each year mail to each licensed podiatrist an annual renewal notice. This annual renewal notice must be completed and returned to the board on or before July 1 of each year. The annual renewal fee, in the amount of thirty-five dollars (\$35) shall be attached to the completed renewal notice when it is returned to the board. Said annual renewal fee shall be paid by certified check, cashier's check or postal money order, payable to the State Board of Podiatry. All information requested on the annual renewal notice form shall be furnished to the board when the completed annual renewal notice form is returned to the board.

Section 2. In addition, the licensed podiatrist shall return with the annual renewal notice form a statement showing his compliance with the continuing education requirements of the board.

RUPERT E. STIVERS, President

ADOPTED: April 13, 1978.

APPROVED: RUSSELL McCLURE, Secretary

RECEIVED BY LRC: May 12, 1978 at 2:45 p.m.

SUBMIT COMMENTS OR REQUEST FOR HEARING TO: Dr. C. A. Nava, 110 North Hubbard Lane, Louisville, Kentucky 40237.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:010. Definitions.

RELATES TO: KRS Chapter 350

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation defines essential terms used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in this chapter or otherwise clearly indicated by their context, terms in this chapter shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by strip mining operations.

(2) "Acid-producing" or "acid-forming materials" means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

(3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, (when not necessary to support its approved postmining use) closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the department determines that they are in compliance with 405 KAR 1:220.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which overburden is to be or has been deposited and shall include all lands affected by the construction of new roads or the improvement or use of existing roads other than public roads, to gain access and to haul coal.

(5) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

(6) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes laterally into an exposed coal seam from the highwall and transporting the coal

along an auger bit to the surface.

(7) "Bench" means the ledge, shelf or terrace formed in the contour method of strip mining.

(8) "Bureau" means the Bureau of Surface Mining Reclamation and Enforcement, Department for Natural Resources and Environmental Protection.

(9) "Coal" means combustible, carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by American Society for Testing Materials designation 0-388-66.

(10) "Combustible material" means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

(11) "Commissioner" means the Commissioner of the Bureau of Surface Mining Reclamation and Enforcement of the Department for Natural Resources and Environmental Protection.

(12) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally done by running heavy equipment over the earth materials.

(13) "Degree" means the angular measurement of land slope from the horizontal, and in each case shall be subject to a tolerance of five (5) percent of error.

(14) "Department" means the Department for Natural Resources and Environmental Protection.

(15) "Disturbed area" means those lands that have been affected by strip mining and reclamation operations.

(16) "Diversion" means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.

(17) "Downslope" means the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall.

(18) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(19) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(20) "Fill bench" means that portion of the bench which is formed by depositing overburden beyond the cut section.

(21) "Final grade" means the finished elevation of any surface disturbance prior to replacement of topsoil.

(22) "Ground water" means subsurface water that fills available openings in rock or soil material such that they may be considered water-saturated.

(23) "Gully erosion" means the erosion process whereby water accumulates in narrow channels over short periods and removes the soil from this narrow area to depths greater than one (1) foot.

(24) "Highwall" means the face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.

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

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

transpiration.

(27) "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of Public Law 95-87 in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

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

(29) "Intermittent or perennial stream" means a watercourse or part of a watercourse that flows continuously during all (perennial) or for at least one (1) month (intermittent) of the calendar year as a result of ground water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one (1) month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

(30) "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

(31) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the coal.

(32) "Noxious plants" means species that have been included on official state lists of noxious plants for the State of Kentucky.

(33) "Operations" means all of the premises, facilities, roads and equipment used in the process of producing coal from a designated strip mine area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal.

(34) "Operator" means any person engaged in strip mining who removes or intends to remove more than 250 tons of coal from the earth by strip mining within twelve (12) successive calendar months or who removes overburden for the purpose of determining the location, quality or quantity of a natural coal deposit.

(35) "Outslope" means the exposed area sloping away from a bench or terrace being constructed as a part of a strip mining and reclamation operation.

(36) "Overburden" means all of the earth and other materials which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of strip mining.

(37) "Permit" means the written document issued by the department to the permittee pursuant to this chapter.

(38) "Permittee" means any person holding a valid permit to conduct strip mining and reclamation operations issued by the department pursuant to this chapter.

(39) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization.

(40) "Productivity" means the vegetative yield produced by a unit area for a unit of time.

(41) "Recharge capacity" means the ability of the soils

and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(42) "Reclamation" means the reconditioning of the area affected by strip mining under a plan approved by the department.

(43) "Recurrence interval" means the precipitation event expected to occur, on the average, once in a specified interval. For example, the ten (10) year, twenty-four (24) hour precipitation event would be that twenty-four (24) hour precipitation event expected to be exceeded on the average once in ten (10) years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U. S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

(44) "Rill erosion" means an erosion process in which numerous small channels only several inches deep are formed.

(45) "Roads" means access and haul roads constructed, used, reconstructed, improved, or maintained for use in strip mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within forty-five (45) days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all federal, state, county, or local roads are excluded from this definition.

(46) "Runoff" means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

(47) "Safety factor" means the ratio of the available shear strength to developed shear stress on a potential surface of sliding determined by accepted engineering practice.

(48) "Secretary" means the Secretary of the Department for Natural Resources and Environmental Protection.

(49) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(50) "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

(51) "Sheet erosion" means an erosion process whereby a uniform layer of soil is removed from the land surface by runoff water.

(52) "Significant, imminent environmental harm to land, air or water resources" is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including but not limited to plant and animal life.

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

1. Is causing such harm; or

2. May be reasonably expected to cause such harm at any time before the end of the reasonable abatement time, that would be set under section 521(a)(3) of Public Law 95-87.

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

(53) "Slope" means average inclination of a surface, measured from the horizontal, normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v to 5h = 20 percent = 11.3 degrees).

(54) "Soil horizons" means contrasting layers of soil lying one below the other, parallel or nearly parallel to the

land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

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

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

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

(55) "Spoil" means overburden that has been removed during strip mining.

(56) "Stabilize" means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

(57) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a land owner for his own noncommercial use from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under regulations established by the department nor shall it include the surface effects or surface impacts of underground coal mining.

(58) "Subirrigation" means irrigation of plants with water delivered to the roots from underneath.

(59) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

(60) "Surface coal mining operations" means:

(a) Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds ($16 \frac{2}{3}$) percent of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration subject to Section 512 of Public Law 95-87; and

(b) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the con-

struction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to such activities.

(61) "Surface water" means water, either flowing or standing, on the surface of the earth.

(62) "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

(63) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or micro-biological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(64) "Toxic-mine drainage" means water that is discharged from active or abandoned mines and other areas affected by strip mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(65) "Valley fill and head-of-hollow fill" means a structure consisting of any materials other than waste placed so as to encroach upon or obstruct to any extent any watercourse other than those minor watercourses located on highland areas where overland flow in natural rills and gullies is the predominant form of runoff. For example, such fills are normally constructed in the uppermost portion of a V-shaped valley in order to reduce the upstream drainage area (head-of-hollow fills). Fills located further downstream (valley fills) must have larger diversion structures to minimize infiltration. Both fills are characterized by rock underdrains and are constructed in compacted lifts from the toe to the upper surface in a manner to promote stability.

(66) "Waste" means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, washed or otherwise separated from product coal and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

(67) "Water table" means upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:020. General provisions.

RELATES TO: KRS Chapter 350

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation set forth general provisions which apply in this chapter with regard to applicability, compatibility, conflicting provisions, severability, obligations of operators, and reporting requirements.

Section 1. Applicability. The regulations in this chapter shall apply to all operations for the strip mining of coal conducted on or after May 3, 1978, on lands from which coal has not yet been removed and to any other lands used, disturbed, or redisturbed in connection with or to facilitate the strip mining of coal or to comply with the requirements of KRS Chapter 350 or the requirements of this chapter except:

(1) The extraction of coal by a land owner for his own noncommercial use from land owned or leased by him;

(2) The extraction of coal as an incidental part of highway or other construction financed by federal, state or local governments;

(3) The extraction of coal in any operation or activity in which are extracted 250 tons or less of coal within a period of twelve (12) consecutive calendar months; and

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds ($16 \frac{2}{3}$) percent of the total mineral tonnage extracted for commercial use or sales.

Section 2. Compatibility with Public Law 95-87. The provisions of this chapter are to be construed as compatible with federal regulations adopted pursuant to Public Law 95-87, the "Surface Mining Control and Reclamation Act of 1977" and the department may amend the regulations of this chapter to achieve conformity and compatibility with such federal regulations.

Section 3. Conflicting Provisions. The provisions of this chapter are to be construed as being compatible with and complimentary to each other. In the event that provisions within this chapter are found to be contradictory, the more stringent provisions shall apply.

Section 4. Severability. In the event that any provision or regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 5. Obligations of Operators. (1) General obligations:

(a) No person or operator shall engage in strip mining for coal without having obtained from the department a valid permit covering the area of land to be affected.

(b) A person or operator engaged in the strip mining of coal shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which bond has

been posted pursuant to KRS 350.060, nor place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to KRS 350.060.

(c) A person or operator engaged in strip mining for coal shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(d) A person or operator engaged in strip mining for coal shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(e) On and after May 3, 1978, any person or operator engaged in strip mining for coal shall comply with the requirements of this chapter, except when compliance with the requirements of this chapter would preclude compliance with the requirements of Public Law 95-87, August 3, 1977, the "Surface Mining Control and Reclamation Act of 1977," and regulations adopted pursuant thereto.

(f) Upon development of any emergency conditions which threaten the life, health, or property of the public, the operator shall immediately notify the persons whose life, health or property are so threatened, shall take any and all reasonable actions to eliminate the conditions creating the emergency, and shall immediately provide notice of the emergency conditions to the department to local law enforcement officials and to appropriate local government officials. Any emergency action taken by an operator pursuant to this paragraph shall not relieve the operator of other obligations under this chapter or of obligations under other applicable local, state or federal laws and regulations.

(g) Compliance with this chapter does not relieve any person or operator from compliance with other applicable regulations of the department.

(2) Pre-existing structures and facilities:

(a) Any pre-existing, non-conforming structure or facility which is used in connection with or to facilitate the strip mining of coal on or after May 3, 1978, shall, by not later than November 4, 1978, be removed and the area reclaimed in accordance with the requirements of this chapter, or shall, by not later than November 4, 1978, be reconstructed to comply with the requirements of this chapter. Reconstruction shall commence by May 3, 1978, except that reconstruction of sedimentation ponds shall commence by June 3, 1978.

(b) Structures or facilities reconstructed pursuant to paragraph (a) of this subsection shall be reconstructed according to engineering plans prepared under the direction of a registered professional engineer, who shall be responsible for engineering supervision during reconstruction, and who upon completion of reconstruction shall certify to the department, within fourteen (14) days thereafter, in a manner prescribed by the department, that the reconstruction was performed in accordance with accepted engineering practices and in accordance with his design plans and that the structure or facility as reconstructed is in compliance with the requirements of this chapter.

(c) Before beginning any reconstruction pursuant to paragraph (b) of this subsection the registered professional engineer responsible for design and reconstruction by June 3, 1978, shall provide the department with two (2) copies of the plans bearing his professional seal and signature, and shall certify to the department that, in his professional judgement, the structure or facility as reconstructed would

comply with the requirements of this chapter.

(d) In the case of sedimentation ponds or other impoundments proposed for reconstruction pursuant to paragraphs (b) and (c) of this subsection, the responsible engineer shall determine the structure hazard classification of the proposed reconstructed structure according to the classification descriptions in paragraph (e). For structures classified (B) - moderate hazard or (C) - high hazard, the operator shall obtain a permit from the department, Division of Water Resources, pursuant to KRS 151.250, and regulations adopted pursuant thereto, prior to reconstruction.

(e) Structure hazard classifications are as follows:

1. The following broad classes of structures are established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

a. Class (A); low hazard: Structures located such that failure would cause loss of the structure itself but little or no additional damage to other property. Such structures will generally be located in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads.

b. Class (B); moderate hazard; Structures located such that failure may cause significant damage to property and project operation, but loss of human life is not envisioned. Such structures will generally be located in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruption of use of service relatively important public utilities.

c. Class (C); high hazard; Structures located such that failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads. This classification must be used if failure would cause probable loss of human life.

2. The responsible engineer shall determine the classification of the structure after considering the characteristics of the valley below the site and probable future development. Establishment of minimum criteria does not preclude provisions for greater safety when deemed necessary in the judgment of the engineer. Considerations other than those mentioned in the above classifications may require that the established minimum criteria may be exceeded as determined by the department. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the drawings.

3. When structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the possibility of a multiple failure must be considered in assigning the structure classification of the upstream structure.

(f) In the event that the date of November 4, 1978 for final compliance on pre-existing, non-conforming structures or facilities is extended by the U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement, such extended final compliance date will also apply automatically with regard to this section.

Section 6. Reporting Requirements. (1) Annual report of mining and reclamation. Any operator or person holding a valid strip mining permit pursuant to KRS 350.060 and regulations adopted pursuant thereto shall submit, in a form and manner prescribed by the department, a report of all mining and reclamation operations conducted pursuant to the permit in the preceding twelve

(12) month period. Such report shall be submitted not later than thirty (30) days after the end of each anniversary date of the permit. However, when the operator requests renewal of the permit pursuant to Section 8 of 405 KAR 1:050, and such information as is required in this subsection has been provided in the request for renewal, the requirement for such report for the preceding twelve (12) month period shall be deemed satisfied. The report shall contain, but shall not be limited to the following information:

(a) The identification of the operation;

(b) Such maps as may be required by the department;

(c) The area of land mined, backfilled and regraded;

(d) The area of land planted or seeded;

(e) The type of planting or seeding, including mixtures and rates of application of plants, seed, lime, fertilizers, insecticides and other agents;

(f) The dates of planting or seeding;

(g) The status of all sediment ponds and hollow fills; and

(h) Such additional information as the department may require.

(i) Such reports shall be certified by the operator as to accuracy.

(2) Mine map. Any operator or person conducting strip mining and reclamation operations on and after May 3, 1978, shall submit to the department before July 3, 1978, an accurate map of the mine and permit area at a scale between 1:6000 and 1:200. The map shall show as of May 3, 1978, the lands from which coal has not yet been removed and the lands and structures which have been used or disturbed to facilitate mining.

(3) Other reports required. The operator shall submit such other reports, documentation, certifications, or other information as the department may require, or as may be required by KRS Chapter 350 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:030. Small operator exemption.

RELATES TO: KRS 350.450

PURSUANT TO: KRS 13.082, 350.028, 350.450

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental

Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth conditions for the exemption of qualified small operators from certain provisions of this chapter.

Section 1. Applicability. If a person or operator is an eligible permittee under Section 2 of this regulation, and intends to engage in strip mining for coal on or after May 3, 1978, the department may certify the permittee as qualified to receive a limited exemption from the provisions of this chapter. The exemption:

(1) Shall not relieve the permittee of his obligations under the terms of the permit, his obligations to comply with the mining and reclamation plan approved by the department, or other obligations imposed upon him by KRS Chapter 350 or other laws and regulations in effect at the time of issuance of the permit;

(2) Shall not relieve the permittee of his obligations imposed by 405 KAR 1:020, Section 5(c), (d) and (e) regarding operations which create imminent danger to the health and safety of the public or significant, imminent environmental harm to land, air or water resources;

(3) Shall not apply to operations conducted pursuant to a permit issued on or after August 3, 1977;

(4) Shall not include the provisions of 405 KAR 1:230, Section 1(1) regarding the placement of spoil or other material on downslopes in steep slope areas; and

(5) Shall exempt the permittee from the requirement of regulations 405 KAR 1:070 through 405 KAR 1:250 of this chapter except as provided in subsection (4) of this section.

Section 2. Eligibility. A permittee is eligible for an exemption under this regulation if:

(1) The actual and attributed production of that permittee is estimated by the department and the Director of the Office of Surface Mining of the U.S. Department of Interior not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and

(2) If that permittee:

(a) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that permittee was 100,000 tons of coal or less from all surface and underground coal mining operations; or

(b) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all surface and underground coal mining operations of that permittee in the average calendar month was an amount of coal which when multiplied by twelve (12) yields a product of 100,000 tons or less; and

(c) In the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.

Section 3. Applications. Applications for an exemption under this section shall be submitted to the Director of the Office of Surface Mining of the U.S. Department of Interior and to the Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Frankfort, Kentucky 40601 by March 1, 1978, or such other date as established by the Office of Surface Mining.

Section 4. Request. The request for exemption shall be in the form of an affidavit and shall include:

(1) The name and address of the permittee and of persons who control the permittee by reason of stock ownership or otherwise.

(2) The name, location, Mine Safety and Health Administration identification numbers, and permit numbers of the surface coal mining operations for which exemption is sought, including a statement of the dates each permit was issued or renewed and will expire.

(3) The date and method of creation and business organization arrangement if the permittee is not an individual.

(4) A listing of all surface and underground coal mining operations showing:

(a) Actual production for the year ending July 31, 1977, attributed to the permittee and the inclusive dates of operation.

(b) Estimated production for the year ending December 31, 1978, attributed to the permittee and the anticipated dates of operation.

(5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the permittee has published in a local newspaper of general circulation in the area of each mine for which an exemption is sought once a week for two (2) weeks stating:

(a) That an application for a small operator exemption will be filed, which if granted would exempt the operator from certain environmental protection performance standards in the Public Law 95-87;

(b) The name and address of the permittee;

(c) The location of the surface coal mining operations to which the exemption will apply; and

(d) That public comments may be submitted to the Director, Office of Surface Mining Reclamation and Enforcement.

(7) Production from the following operations shall be attributed to the permittee as follows:

(a) All coal produced by operations beneficially owned entirely by the permittee, or controlled by reasons of ownership, direction of the management, or in any other manner by the permittee.

(b) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a five (5) percent interest.

(c) All coal produced by persons who own more than five (5) percent of the permittee or who directly or indirectly control the permittee by reason of stock ownership, direction of the management or in any other manner.

(d) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the permittee.

Section 5. (1) The department shall certify the applicant as qualified for the exemption if, based upon comments from the Office of Surface Mining or the public, or any other information, it finds that:

(a) The permittee has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(b) The exemption will not be inconsistent with state or federal law, regulation or permit terms.

(2) The exemption shall be effective on the date approved and shall remain in effect until expiration of the permit to which it applies, December 31, 1978 or until revoked, whichever is earlier.

(3) The department shall revoke the qualification for the exemption upon finding that the qualification was erroneously issued or that the exempted operation has or will produce more than 100,000 tons of coal per year.

(4) Any person aggrieved by the decision of the department under this section may appeal within thirty (30) days

from receipt of that decision to Franklin Circuit Court pursuant to KRS 350.032(2).

LOWELL E. BRANDENBURG, Commissioner
 ADOPTED: May 3, 1978
 APPROVED: EUGENE F. MOONEY, Secretary
 RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.
 PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

**DEPARTMENT FOR NATURAL RESOURCES
 AND ENVIRONMENTAL PROTECTION**
 Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:040. Operations affecting two acres or less.

RELATES TO: KRS 350.400
 PURSUANT TO: KRS 13.082, 350.028, 350.060(10)
 NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for strip mining operations which affect two acres or less.

Section 1. Definitions. The definitions of terms as stated in 405 KAR 1:010 shall apply with respect to this regulation except as otherwise specifically stated in this regulation or except as otherwise clearly indicated by the context of use of such terms in this regulation.

Section 2. General Provisions. (1) Applicability:

(a) This regulation shall apply to operations for the strip mining of coal which would affect two (2) acres or less, including areas to be mined, spoil disposal areas, access and haul roads, and other surface operations and facilities directly associated with the mining operation which are located contiguous to or in the immediate vicinity of the mining operation.

(b) This regulation shall not apply when complete feasible recovery of the coal resource at the proposed location would require operations which would affect more than two (2) acres, and the department reasonably expects that other proposals to strip mine coal in the immediate vicinity will be forthcoming in order to complete the feasible recovery of the coal resource.

(c) No permit will be issued pursuant to this regulation to strip mine an area located within 200 feet of another operation for which a permit has been issued pursuant to this regulation.

(d) The provisions of this regulation shall apply only to strip mining operations for which permits are issued on or after May 3, 1978.

(2) General obligations. The obligations imposed upon all operators by 405 KAR 1:020, Section 5(1)(a), (b), (c), (d), (f), and (g) and the reporting requirements of 405 KAR

1:020, Section 6(1) and (3), shall apply with respect to this regulation.

Section 3. Permit Requirements. (1) The provisions of 405 KAR 1:050 shall apply with respect to this regulation, except as otherwise provided in this section.

(2) Those provisions of 405 KAR 1:050 which are listed in this subsection shall not apply with respect to this regulation:

(a) 405 KAR 1:050, Section 4(6), with regard to prime farmland;

(b) 405 KAR 1:050, Section 4(7), with regard to postmining land use;

(c) 405 KAR 1:050, Section 4(13)(b), with regard to water quality standards and surface water monitoring; and

(d) 405 KAR 1:050, Section 4(14), with regard to ground water.

Section 4. Environmental Protection Performance Standards. (1) The environmental protection performance standards set forth in this chapter in regulations 405 KAR 1:070 to 405 KAR 1:250, inclusive, shall apply with respect to this regulation except as provided in this section.

(2) Those provisions of 405 KAR 1:070 to 405 KAR 1:250, inclusive, which are listed in this subsection, shall not apply with respect to this regulation except as herein provided:

(a) Postmining land use. 405 KAR 1:070 shall not apply with respect to this regulation. No provision of this chapter which imposes requirements related to postmining land use shall apply with respect to this regulation.

(b) Water quality standards and surface water monitoring:

1. The provisions of 405 KAR 1:170 shall not apply with respect to this regulation.

2. The department may require that the permittee monitor the quality of water discharges from the permit area in a manner prescribed by the department and submit to this department such monitoring reports as the department may require. The parameters to be monitored may include total iron, total manganese, total suspended solids, and pH.

(c) Ground water. The provisions of 405 KAR 1:180 shall not apply with respect to this regulation.

(d) Sediment control measures. The provisions of 405 KAR 1:200, Section 1(2), requiring sedimentation ponds shall not apply with respect to this regulation, except that the department may require the construction of sedimentation ponds when necessary to prevent excessive contributions of suspended solids to surface runoff from the permit area. Criteria required for design and construction of sedimentation ponds pursuant to this paragraph shall not be more stringent than criteria provided in 405 KAR 1:200.

(e) Prime farmland. The provisions of 405 KAR 1:250 shall not apply with respect to this regulation.

Section 5. (1) Variances. The department may at its discretion waive any provision of this chapter with respect to this regulation, except the provisions of 405 KAR 1:020, Section 5(1)(a), (b), (c), (d), (f), and (g); 405 KAR 1:050, Section 1; and 405 KAR 1:060, upon written finding by the department that the public and the environment will in the absence of such provisions be provided adequate protection consistent with the purpose of this chapter.

(2) In any permit issued pursuant to this regulation, the department shall not impose requirements more stringent than provided in this regulation.

Section 6. Inspection and Enforcement Procedures. The provisions of 405 KAR 1:060 shall apply with respect to this regulation.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:050. Permit requirements.

RELATES TO: KRS 350.060

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth procedures and requirements related to permits.

Section 1. Permit required. (1) No person shall engage in strip mining of coal without having first obtained a permit from the department.

(2) The permit shall authorize the permittee to engage in strip mining of coal upon the area described in his application for a period of two (2) years from the date of issuance.

(3) Valid permits in effect on May 4, 1978, which were originally issued on or after May 4, 1977, shall be valid for a period of two (2) years from the date of issuance. These permits shall authorize strip mining operations on an area and during a time period for which the operator has posted appropriate bond coverage.

(4) The permit shall confer upon the operator a qualified right to strip mine coal, but shall not relieve the operator of responsibility to comply with all applicable federal, state and local laws and regulations.

Section 2. Preliminary Requirements. A person desiring a permit shall submit to the department a preliminary application of the form and content prescribed by the department. The preliminary application shall contain pertinent information including, but not limited to, a U.S. Geological survey 7½-minute topographic map marked to show the approximate boundaries of the area of land to be affected, and the approximate locations of the coal seam(s) to be mined, access roads, haul roads, soil disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the department. Personnel of the department shall conduct an on-site investigation of the area with the person

or his representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 3. Publication of Notice of Intention to Mine.

(1) A prospective applicant for a permit required by KRS 350.060 shall publish at least once a public notice of his intention to file an application for that permit. Such publication shall be made by advertisement in a newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed mining site is located.

(2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled "Notice of Intention to Mine" and shall be in a manner and form prescribed by the department and shall include, though not be limited to, the following:

(a) The name and address of the applicant;

(b) The permit application number;

(c) The location of the proposed mining site;

(d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed operation.

(4) The applicant for a permit required by KRS 350.060 shall establish the date and place at which the "Notice of Intention to Mine" was published by attaching to his application an affidavit from the publishing newspaper certifying the time, place and content of the published notice.

Section 4. Permit Application. (1) A person desiring a permit shall submit an application of form and content as prescribed by the department. The application shall be on forms provided by the department, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the department with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the department may require.

(2) The application shall include, but not be limited to, the information described in subsections (2) through (16) of this section:

(a) The location and area of land to be affected by the operation, with a description of access to the site from the nearest public highway;

(b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area within 500 feet of any part of the affected area;

(c) The owner or owners of the coal to be mined;

(d) The source of the applicant's legal right to mine coal on the land affected by the permit;

(e) The main and local post-office address of the applicant;

(f) Whether or not the applicant or any person associated with the applicant, as specified in subsection (2)(g), holds or has held any other permits under KRS Chapter 350, and an identification of such permits;

(g) Whether or not the applicant is in compliance with KRS 350.130(3) regarding past suspensions or revocations of permits, forfeitures of bond, or repeated non-compliance or violation, and whether or not every officer, partner, director or any individual owning of record or beneficially (alone or with associates) if known, ten (10)

percent or more of any class of stock of the applicant, is subject to any of the provisions of KRS 350.130(3) and he shall so certify;

(h) A copy of the applicant's published notice of intention to mine and an affidavit from the publisher, pursuant to Section 3 of this regulation.

(3) Maps. The application shall include or be accompanied by five (5) copies of a United States Geological Survey 7½-minute topographic map or other such map acceptable to the department on which the operator has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.

(4) Enlarged maps. The application shall include or be accompanied by five (5) copies of an enlarged United States Geological Survey 7½-minute topographic map or other such map acceptable to the department meeting the requirements of paragraphs (a) through (h) of this subsection. The map shall:

(a) Be prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. The certification shall read as follows, "I, the undersigned, hereby certify that his map is correct, and shows to the best of my knowledge and belief all the information required by the strip mining laws of this state." The certification shall be signed and notarized. The department may reject any map as incomplete if its accuracy is not so attested.

(b) Identify the area of land to be affected to correspond with the application.

(c) Show adjacent underground mining and the boundaries of surface properties and names of owners on the affected area and within 500 feet of any part of the affected area.

(d) Be of a scale between 400 feet to the inch and 600 feet to the inch.

(e) Show the names and locations of all streams, lakes, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, public parks, public property, and utility lines on the area of land affected and within 500 feet of such area.

(f) Show by appropriate markings the boundaries of the area of land to be affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land to be affected.

(g) Show the date on which the map was prepared, the north point and the quadrangle name.

(h) Show the drainage plan on and away from the area of land to be affected. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(5) Transportation plan. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Department of Transportation) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the strip mining operation.

(a) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(b) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(c) The plan shall contain a certification by a duly authorized official of the Kentucky Department of Transportation attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

(6) Prime farmland. The application will include or be accompanied by either:

(a) A negative declaration of prime farmland consistent with the requirements of 405 KAR 1:250, Section 4; or

(b) A plan for the mining and restoration of prime farmland consistent with the requirements of 405 KAR 1:250, Sections 5, 6, and 7.

(7) Postmining land use plan. The application shall include or be accompanied by a plan for postmining land use which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:070 regarding postmining land use.

(8) Use of explosives plan. The application shall include or be accompanied by a plan for use of explosives which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:090 with regard to use of explosives.

(9) Topsoil handling plan. The application shall include or be accompanied by a plan for the handling of topsoil which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:100 with regard to topsoil handling.

(10) Backfilling and grading plan. The application shall include or be accompanied by a plan for backfilling and grading which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:130 with regard to backfilling and grading.

(11) Spoil disposal plan. The application shall include or be accompanied by a plan for the disposal of spoil in excess of that required to meet the backfilling and grading requirements of 405 KAR 1:130 which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:140 with regard to disposal of spoil.

(12) Plan for handling of waste materials and acid-forming and toxic-forming materials. The application shall include a plan for the handling of acid-forming or toxic-forming materials, waste materials or other unstable materials which shall demonstrate to the satisfaction of the department that the operation will comply with the requirements of 405 KAR 1:150 with regard to waste materials and acid and toxic materials.

(13) Surface water control and monitoring plan. The application shall contain or be accompanied by a plan for the control and monitoring of surface water, which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of:

(a) 405 KAR 1:160 with regard to protection of the hydrologic system;

(b) 405 KAR 1:170 with regard to water quality standards and surface water monitoring;

(c) 405 KAR 1:200 with regard to sediment control measures; and

(d) 405 KAR 1:190 with regard to diversions of surface flows.

(14) Ground water control and monitoring plan. The application shall include or be accompanied by a plan for the control and monitoring of ground water, which shall demonstrate to the satisfaction of the department that the

tain 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 seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary shall consider the report and recommended order and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer and the department's or issue his own written order based on the report and recommended order. The secretary shall act within twenty (20) days of the deadline for filing exceptions, unless extensions of time have been granted to the hearing officer, pursuant to paragraph (e).

(e) After completion of the hearing and filing of exceptions, the department shall notify the applicant in writing, certified mail, return receipt requested, of the final decision of the department. If any extension of time is granted by the secretary for a hearing officer to complete his report, the department shall notify all parties at the time of the granting of the extension. Parties shall have seven (7) days to file exceptions to the report and recommended order if such an extension is granted.

(f) 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.

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

(h) There shall be no ex parte communications between a hearing officer and parties to the action.

(i) Any person aggrieved by a final order of the department may have recourse to the courts as set forth in KRS 224.085 and 350.032(2).

Section 6. Deletion of Areas and Denial of Permit. (1) The department shall delete from a permit areas proposed to be affected by strip mining operations, or shall deny a permit when necessary to insure compliance with the provisions of this section.

(2) No application for a permit and no operation shall be approved or allowed by the department if there is found on the basis of the information set forth in the application, or based on other relevant information available to the department, that the requirements of KRS Chapter 350 and this chapter will not be observed, or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of KRS Chapter 350.

(3) If the department finds, based upon experience with similar operations upon lands with similar overburden, that substantial deposition of sediment in stream beds, landslides or acid water pollution cannot feasibly be prevented, the department may delete such part of the land described in the application upon which such overburden exists.

(4) Subject to valid existing rights no strip mining operation except those which existed on or before August 4, 1977, shall be permitted to be within 300 feet from any occupied dwelling unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building or public park, or

within 100 feet of a cemetery.

(5) The department shall not issue a permit if it finds that the operation will constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property. The department shall delete such areas from the permit application or operation.

(6) The department shall not give approval to strip mine any area which is within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line, provided however that the department may permit such public roads to be relocated, or may permit the area affected to lie within 100 feet of such public road, if after public notice and opportunity for public hearing in the locality a written finding is made by the department that the interest of the public and the land owner affected thereby will be protected.

(7) The department shall not issue a permit to strip mine an area unless it finds that adequate measures have been or will be undertaken to eliminate damage to members of the public, their real and personal property, public roads, streams, and all other public property, from soil erosion, rolling stones and overburden, water pollution, and hazards dangerous to life and property.

(8) No land within 100 feet of an intermittent or perennial stream shall be disturbed by strip mining and reclamation operations unless the department specifically authorizes operations through such a stream. The area not to be disturbed shall be designated a buffer zone and be marked as specified in 405 KAR 1:080 regarding signs and markers.

(9) Denial of permit for past violations:

(a) An operator or person whose mining permit or operation has been revoked, suspended, or terminated shall not be eligible to receive another permit or begin another operation, or be eligible to have suspended permits or operations reinstated, until he shall have complied with all the requirements of KRS Chapter 350 in respect to all permits issued him.

(b) No operator or person who has forfeited any bond shall be eligible to receive another permit or begin another operation unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator or person has paid such sum as the department finds is adequate to reclaim such lands.

(c) The department shall not issue any additional permits to, or allow future operations by, any operator or person who has repeatedly been in noncompliance with or violation of KRS Chapter 350, or who has had permits revoked or operations terminated on more than three (3) occasions.

Section 7. Increase or Decrease of Area under Permit. Upon application by the operator, the department may amend a valid existing permit so as to increase or decrease the permitted area of land to be affected by operations under that permit. Such applications for amendment may be filed at any time during the term of the permit.

(1) Increase of area under permit:

(a) Application. The operator shall file an application in the same form and with the same content as required for an original application under Sections 2, 3, and 4 of this regulation.

(b) Fees. The operator shall pay in the manner prescribed in Section 4(17) of this regulation, a basic fee of \$250 plus a fee of fifty dollars (\$50) for each acre or fraction of

operation will comply with the requirements of:

(a) 405 KAR 1:160 with regard to protection of the hydrologic system;

(b) 405 KAR 1:180 with regard to ground water; and

(c) 405 KAR 1:190 with regard to diversion of underground flows.

(15) Revegetation plan. The application shall include or be accompanied by a revegetation plan which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 1:110 with regard to revegetation.

(16) In the required operational plans specified in subsections (5) through (15) of this section and in the other requirements of this section, the department may require all such supporting documentation as the department may deem necessary to insure that the provisions of this chapter will be met. Such documentation may include but not be limited to detailed engineering drawings, engineering calculations, and documentation prepared by qualified persons in other appropriate technical fields or sciences.

(17) Fees. On and after June 17, 1978, as provided by KRS 350.060, the application shall be accompanied by a cashier's check or money order payable to the Kentucky State Treasurer in the amount of \$250 plus fifty dollars (\$50) for each acre or fraction thereof of the area of land to be affected by the operation. No permit application shall be processed unless such fees have been paid.

(18) Bonds:

(a) The operator shall file with the department a bond payable to the Commonwealth of Kentucky, with surety satisfactory to the department, in the penal sum to be determined by the department on the recommendation of the secretary, of not less than \$500 nor more than \$3,000 for each acre or fraction thereof of the area of land affected, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in KRS Chapter 350 and of the rules and regulations promulgated pursuant thereto in this chapter.

(b) In determining the amount of bond within the limits in paragraph (a) of this subsection, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, and reclamation to be required as provided in this chapter.

(c) In a particular instance where the circumstances are such as to warrant an exception, the department may in its discretion reduce the amount of the bond for a particular operation to less than the minimum required in paragraph (a) of this subsection.

Section 5. Procedures for Processing of Application.

(1) Five (5) complete, but separate and distinct copies of the application shall be submitted to the department at the location and address prescribed by the department. The department will provide written acknowledgment of receipt of the application.

(2) Within thirty (30) working days the department shall either:

(a) Issue a permit to the applicant, or deny the application; or

(b) Notify the applicant in writing, of any proposed modifications to the application, and allow it to be temporarily withdrawn for that purpose.

(c) Temporary withdrawal periods shall not be considered in computation of the thirty (30) working days.

(3) If the department denies an application, it shall set forth in writing the reasons for the denial.

(4) Hearings:

(a) An applicant aggrieved by the actions of the depart-

ment pursuant to subsection (3) may by written notice request that a hearing be conducted by the department. The right to demand such 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 such notice. The department shall schedule a hearing before the department not less than twenty-one (21) days after notice of demand for such a hearing. 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 regulations involved; and a short statement of the reason for the granting of the hearing.

(b) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a pre-hearing 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 pre-hearing conference by stipulation, agreed settlement, consent order or default.

(c) 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, shall keep order, and shall conduct 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 of 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. Notice may be taken of generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

3. It will be within the hearing officer's discretion to require official transcripts or to set up other procedures for taking evidence. 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 opened to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.035.

(d) 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 order shall con-

acre of increased area requested on and after June 17, 1978, as provided in KRS 350.070.

(c) The operator shall file with the department a supplemental bond in the amount to be determined as provided in Section 4(18) of this regulation, for each acre or fraction of an acre of the increased area approved.

(d) The date of expiration of the amended permit shall be the same as the date of expiration of the permit prior to amendment.

(2) Decrease of area under permit:

(a) Application. The operator shall file an application upon forms provided by the department, with such documentation as the department may require, showing the undisturbed area which is requested to be subtracted from the area of land covered by the existing valid permit.

(b) Release of bond. If the department approves the decrease in permitted area it shall release the bond for each acre of the decrease, but in no case shall the bond be reduced below \$5,000 except as provided in Section 4(18)(c) of this regulation.

(c) Acreage fees transferred. If the department approves the decrease in acreage under permit the fees for each acre decreased shall be transferred and credited to acreage fees in subsequent application by the operator.

Section 8. Renewal of Valid Existing Permit. (1) Any valid permit issued pursuant to KRS Chapter 350 shall carry with it the right of successive renewal upon expiration, with respect to areas within the boundaries of the existing permit. Any permit renewal shall be for a term not to exceed the period of the original permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application which addresses any new land areas shall be subject to the full standards applicable to new applications pursuant to KRS Chapter 350, and a new and original application shall be required for such areas.

(3) Application for permit renewal shall be made not later than thirty (30) working days prior to the expiration of the existing valid permit. The holders of the permit may apply for renewal and such renewal shall be issued, and the public notice requirements of this chapter shall not apply, provided that the requirements of paragraphs (a) through (f) of this subsection are met.

(a) The application for renewal shall be submitted in the form, manner and content as prescribed by the department.

(b) The operator shall submit, in the manner prescribed by the department, all revised or updated information required by the department. Such information shall include, but not be limited to, an updated operational plan current to the date of request for renewal, showing the status and extent of all strip mining and reclamation operations on the existing permit.

(c) The terms and conditions of the existing permit are being satisfactorily met.

(d) The present strip mining and reclamation operation is in compliance with the environmental protection standards of this chapter as set forth in 405 KAR 1:070 through 405 KAR 1:250.

(e) The renewal requested does not substantially jeopardize the operator's continuing responsibility on existing permit areas.

(f) The operator shall provide evidence that the performance bond is in effect for the renewal requested, as well as any additional bond which the department might

require.

(4) Prior to approval of any permit renewal the department shall provide notice to the appropriate public authorities.

Section 9. Succession of One Operator by Another. (1) Where one operator succeeds another at any incomplete operation, either by sale, assignment, lease or otherwise, the department may release the first operator from all liability under this chapter for that particular operation provided the requirements of paragraphs (a) and (b) of this section are met.

(a) The successor operator shall have been issued a permit and shall have otherwise complied with the requirements of this chapter.

(b) The successor operator shall assume as part of his obligation under this chapter, all liability for the reclamation of land areas affected by the former operator.

(2) A successor in interest to a permittee who applies for a new permit within thirty (30) days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue strip mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

Section 10. Other Mining Operations on Strip Mine Areas. If approved by the department, an operator may conduct other mining operations from permits covered by a valid strip mining permit, subject to the provisions of KRS Chapters 351 and 352; provided such other operations are conducted in accordance with procedures and environmental protection performance standards as contained in KRS Chapter 350 and regulations adopted pursuant thereto regarding such other mining operations.

(1) Application for approval. In applying to the department for such approval the operator shall apply for such permit or authorization as may be required by KRS Chapter 350 or regulations adopted pursuant thereto for mining operations. The operator shall also furnish the department a revised copy of the map of the area on which the valid strip mining permit was based, on which he shall designate other mining operations, the location of outside haulageways, and other parts of the area necessary to the conduct of other mining operations.

(2) Deferral of reclamation. Subject to compliance with the water quality standards of 405 KAR 1:170, and subject to the requirements of KRS Chapter 350 and regulations adopted pursuant thereto regarding such other mining operations, the department may authorize the operator to defer the reclamation of the area covered by such other mining operations during such time as other bona fide mining operations are carried out.

(3) Bond to remain in effect. The bond covering such area shall remain in effect until reclamation of such area has been completed by the operator as required by the provisions of KRS Chapter 350 and regulations adopted pursuant thereto.

Section 11. Release of Bond. (1) When the backfilling and grading have been completed for an area in a manner consistent with the requirements of this chapter, and the soil pH level as required by the department has been established, the permittee may submit to the department a report and request for partial release of bond for the area. The report shall state the number of acres and type of area affected for which the partial bond release is requested and shall contain appropriate maps, cross-sections, and other

engineering and technical documentation as the department may require to demonstrate to the satisfaction of the department that the requirements of this chapter have been met with regard to backfilling and grading and that the required soil pH level has been established.

(2) Upon verification of the report and request, the department shall release to the permittee the bond which was posted for that area in its full amount less \$300 per acre.

(3) After the preparation, planting and mulching of a given area and after not less than two (2) growing seasons, the permittee may submit a report for release of the remaining bond of \$300 per acre. The report shall demonstrate to the satisfaction of the department that the requirements of this chapter have been met with regard to revegetation, and that surface drainage from the area meets the water quality standards of this chapter prior to any treatment of the drainage.

(4) After verification of the request and report of vegetation and water quality, the department shall release to the permittee the remaining bond in the full amount of \$300 per acre.

(5) Transfer of liability. A person or organization, having qualifications acceptable to the department, may post bond or a cash deposit in a sum determined by the department and assume the liability for carrying out the reclamation plan approved by the department in areas where the mining operation and any necessary backfilling and grading have been completed. The department shall then release the bond posted by the permittee for such area.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:060. Inspection and enforcement procedures.

RELATES TO: KRS 350.130

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth procedures for inspection and enforcement.

Section 1. Inspection Procedures. The department shall make such inspections or investigations as it deems

necessary to insure compliance with any provision of KRS Chapter 350 and regulations adopted pursuant thereto.

Section 2. Enforcement Procedures. (1) Determination of violations. The department shall determine whether violations of the provisions of KRS Chapter 350 and regulations adopted pursuant thereto have occurred.

(2) Notice of violations. If the department determines that such violations have occurred, the department shall by certified mail (return receipt requested) provide written notice to the operator that such violations have occurred and shall therein stipulate a reasonable time period for the feasible correction of such violations.

(3) Notice of noncompliance, order of suspension:

(a) If any of the requirements of KRS Chapter 350 or rules and regulations adopted pursuant thereto have not been complied with within the time limits set by the department, or by KRS Chapter 350 or regulations adopted pursuant thereto, the department shall cause a notice of noncompliance to be served upon the operator; or where found necessary, the secretary shall, after a hearing (except as provided in KRS 244.071), order the suspension of a permit or operation.

(b) Such notice or order shall be handed to the person in charge of the operation. Such notice or order shall also be handed to the operator in person, or shall be served upon the operator by certified mail (return receipt requested), or by registered mail, addressed to the permanent address shown on the permit application. If no address is shown on the application, then such notice or order shall be mailed to such other address as known to the department.

(c) The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with KRS Chapter 350 or the regulations or orders of the department.

(4) Revocation of permit; termination of operation; forfeiture of bond. If the operator has not reached an agreement with the department or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked or the operation terminated, after a hearing, by order of the department and the performance bond, if any, shall then be forfeited to the department.

Section 3. Penalties. Any person or operator who violates any of the provisions of KRS Chapter 350 or regulations adopted pursuant thereto, or who fails to perform the duties imposed by such provisions, or who violates any determination or order promulgated pursuant to the provisions of KRS Chapter 350, shall be subject to civil and criminal penalties as set forth in KRS 350.990.

Section 4. Hearing. (1) an operator or permittee aggrieved by the actions of the department pursuant to this regulation may by written notice request that a hearing be conducted by the department. The right to demand such 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 such notice. The department shall schedule a hearing before the department not less than twenty-one (21) days after notice of demand for such a hearing. 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 regulations involved; and a short statement of the reason for the granting of the hearing.

(2) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a pre-hearing 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 pre-hearing conference by stipulation, agreed settlement, consent order or default.

(3) (a) 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, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice.

(b) 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 of 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. Notice may be taken of generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(c) It will be within the hearing officer's discretion to require official transcripts or to set up other procedures for taking evidence. 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 payment of the actual cost of reproducing the original except as provided in KRS 224.035.

(d) 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 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 seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary shall consider the report and recommended order and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer and the department's or issue

his own written order based on the report and recommended order. The secretary shall act within twenty (20) days of the deadline for filing exceptions, unless extensions of time have been granted to the hearing officer, pursuant to paragraph (e).

(e) After completion of the hearing and filing of exceptions, the department shall notify the applicant in writing, certified mail, return receipt requested, of the final decision of the department. If any extension of time is granted by the secretary for a hearing officer to complete his report, the department shall notify all parties at the time of the granting of the extension. Parties shall have seven (7) days to file exceptions to the report and recommended order if such an extension is granted.

(f) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one extension, and no more than two (2) such extensions shall be granted.

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

(h) There shall be no ex-parte communications between a hearing officer and parties to the action.

(i) Any person aggrieved by a final order of the department may have recourse to the courts as set forth in KRS 224.085 and 350.032(2).

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED:

EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:070. Postmining land use.

RELATES TO: KRS 350.405

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to the postmining use of land.

Section 1. General. All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or to higher or better uses achievable under criteria and procedures of this regulation.

Section 2. Determining Premining Land Use. (1) The premining land uses to which the postmining land use is compared shall be those uses which the land previously supported if the land had not been previously mined and had been properly managed.

(2) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(3) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(4) If the premining use of the land was changed within five (5) years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

Section 3. Land use is categorized in the following groups: (1) Heavy industry. Manufacturing facilities, power plants, airports or similar facilities.

(2) Light industry and commercial services. Office buildings, stores, parking facilities, apartment houses, motels, hotels, or similar facilities.

(3) Public services. Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.

(4) Residential. Single- and multiple-family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than five (5) percent of the total land area of housing capacity, associated open space, and minor vehicle parking and recreation facilities supporting the housing.

(5) Cropland. Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included.

(6) Rangeland. Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.

(7) Hayland or pasture. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.

(8) Forest Land. Land with at least a twenty-five (25) percent tree canopy or land at least ten (10) percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.

(9) Impoundments of water. Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation, or water supply.

(10) Fish and wildlife habitat and recreation lands. Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife or recreation.

(11) Combined uses. Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

Section 4. Criteria for Approving Alternative Postmining Land Uses. Change from one to another land use

category in premining to postmining constitutes an alternate land use and the applicant shall meet the requirements of this section and all other applicable provisions of this chapter. Mountaintop removal operations must also meet the criteria of this section in addition to the requirements of 405 KAR 1:240 of this chapter with regard to mountaintop removal. An alternative postmining land use shall be approved by the department after consultation with the landowner or the land-management agency having jurisdiction over state or federal lands, if the criteria of this section are met.

(1) The proposed land use is compatible with adjacent land use and where applicable, with existing local, state or federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall accompany the request for approval. The applicant shall obtain any required approval of local, state or federal land management agencies, including any necessary zoning or other changes necessarily required for the final land use.

(2) Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, projected land use trends, and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The department may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the applicant, as appropriate, to provide them in a manner compatible with the applicant's plans.

(4) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the applicant as appropriate, if the postmining land use is to be developed by such parties.

(5) The plans are designed under the general supervision of a registered professional engineer or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the department and appropriate state and federal fish and wildlife management agencies.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, shall be reviewed by the department to assure that:

(a) There is a firm written commitment of the applicant or by the landowner or land manager to provide sufficient crop management after release of applicable performance bond to assure that the proposed postmining cropland use remains practical and reasonable;

(b) There is sufficient water available and committed to maintain crop production; and

(c) Topsoil quality and depth are shown to be sufficient to support the proposed use.

(10) The department has provided by public notice not less than forty-five (45) days nor more than sixty (60) days for interested citizens and local, state and federal agencies to review and comment on the proposed land use.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:080. Signs and markers.

RELATES TO: KRS 350.200, 350.210

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to the use of signs and markers at strip mining operations.

Section 1. General. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. Signs and other markers shall be maintained by the permittee during all operations to which they pertain and shall be kept legible and visible and shall conform to all local ordinances and codes. The department may establish standards for construction of signs and markers as necessary to accomplish the purposes of this regulation.

Section 2. Mine and Permit Identification Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall clearly identify the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds. Failure to post such signs shall be grounds for revocation of the permit.

(2) Signs constructed pursuant to this section shall be constructed of wood or other durable material, with the sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 3. Perimeter Markers. The perimeter of the permit area shall be clearly marked by durable and easily recognized markers. Perimeter markers shall have permit numbers permanently affixed and shall be located so that adjacent markers are clearly visible.

Section 4. Buffer Zone Markers. Land areas within 100 feet of perennial and intermittent streams shall not be disturbed unless specifically authorized by the department. Such areas to be undisturbed are to be designated as buffer zones and shall be marked along the interior boundary of the buffer zone in a manner consistent with perimeter markers.

Section 5. Blasting Signs. If blasting is necessary to conduct strip mining operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the permit area.

Section 6. Topsoil Markers. Areas where topsoil or other vegetation-supporting material is segregated and stockpiles shall be marked. Placement and quantity of markers shall be sufficient to clearly define such stockpiles. Markers shall remain in place until the material is removed.

Section 7. Monuments Marking Permit Areas. The permittee shall place a monument at the beginning and end of each original and additional permit area. Such monument shall consist of a metal pipe, at least three (3) inches in diameter, which shall be permanently fixed by the operator to protrude at least three (3) feet above the surface of the ground. The permit number shall be placed on the monument.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:090. Use of explosives.

RELATES TO: KRS 350.430

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip min-

ing of coal. This regulation sets forth requirements relating to the use of explosives.

Section 1. General. (1) The permittee shall comply with all applicable local, state and federal laws and regulations and the requirements of this regulation in the storage, handling, preparation, and use of explosives.

(2) Blasting operations that use more than the equivalent of five (5) pounds of TNT shall be conducted according to a time schedule approved by the department.

(3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosive materials shall:

(a) Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;

(b) Be capable of using mature judgment in all situations;

(c) Be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs;

(d) Possess current knowledge of the local, state, and federal laws and regulations applicable to his work; and

(e) Have obtained a certificate of completion of training and qualification as required by KRS 351.315.

Section 2. Blasting Plan. A blasting plan shall be submitted with the permit application for approval by the department. The blasting plan shall contain the following in addition to any other blasting procedures which may be peculiar to the proposed operation or which may be required by a preblasting survey:

(1) The blasting schedule stipulating the hours during which blasting will be conducted;

(2) Types of audible warning and all-clear signals which will be used before and after blasting;

(3) Whether the permittee intends to use seismograph measurements for every blast or whether the formula in Section 7 will be followed;

(4) Location of where record of each blast will be retained and will be available for inspection by the department and the public;

(5) Name and address of newspapers in which the blasting schedule will be published;

(6) Names and addresses of local governments and public utilities to which blasting schedules will be mailed;

(7) A description of how emergency situations as defined in Section 6(2) will be handled when it may be necessary to blast at times other than those described in the schedule.

Section 3. Preblasting Survey. The department may require that a preblasting survey be made and may determine the area to be included in the survey.

(1) On the request to the department of a resident or owner of a manmade dwelling or structure that is located within one-half ($\frac{1}{2}$) mile of any part of the permit area, the permittee shall conduct a preblasting survey of the dwelling or structure and submit a report of the survey to the department.

(2) Personnel approved by the department shall conduct the survey to determine the condition of the dwelling or structure and to document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems

used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall include recommendations for any special considerations or proposed adjustments to the blasting procedures outlined in Sections 6 through 9 of this regulation which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the department.

Section 4. Public Notice of Blasting Schedule. At least ten (10) days, but not more than twenty (20) days before beginning a blasting program in which explosives that use more than the equivalent of five (5) pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one-half ($\frac{1}{2}$) mile of the blasting sites described in the schedule. The permittee shall republish and redistribute the schedule by mail at least every three (3) months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedules shall contain at a minimum:

(1) Identification of the specific areas in which blasting will take place. The specific blasting areas described shall not be larger than 300 acres with a generally contiguous border;

(2) Dates and times when explosives are to be detonated expressed in increments of not more than four (4) hours;

(3) Methods to be used to control access to the blasting area;

(4) Types of audible warnings and all clear signals to be used before and after blasting; and

(5) A description of possible emergency situations as defined in Section 6(2) when it may be necessary to blast at times other than those described in the schedule.

Section 5. Public Notice of Changes to Blasting Schedules. Before blasting in areas not covered by a previous schedule or whenever the proposed frequency of individual detonations are materially changed, the permittee shall prepare a revised blasting schedule in accordance with the procedures in Section 4 of this regulation. If the change involves only a temporary adjustment of the frequency of blasts, the permittee may use alternate methods to notify the governmental bodies and individuals to whom the original schedule was sent.

Section 6. Blasting Procedures. (1) All blasting shall be conducted only during daytime hours, defined as sunrise to sunset. Based on public requests or other considerations, including the proximity to residential areas, the department may specify more restrictive time periods.

(2) Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions, or the safety of the operator or public requires unscheduled detonation.

(3) Warning and all-clear signals shall be given which are of different character and are audible within a range of one-half ($\frac{1}{2}$) mile from the point of the blast. All persons within the permit area shall be notified of the meaning of

the signals through appropriate instructions and signs posted as required by 405 KAR 1:080 relating to signs and markers.

(4) Access to the blasting area shall be regulated to protect the public and livestock from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry beginning at least ten (10) minutes before each blast and lasting until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and that access to and travel in or through the area can safely resume.

(5) Areas in which charged holes are awaiting firing shall be guarded, barricaded and posted, or flagged against unauthorized entry.

(6) Airblast shall be controlled such that it does not exceed 128 decibel linear-peak at any manmade dwelling or structure located within one-half ($\frac{1}{2}$) mile of the permit area.

(7) Except where lesser distances are approved by the department, based upon a preblasting survey or other appropriate investigations, blasting shall not be conducted within:

(a) One thousand (1,000) feet of any building used as a dwelling, school, church, hospital, or nursing facility;

(b) Five hundred (500) feet of facilities including, but not limited to disposal wells, petroleum or gas-storage facilities, fluid-transmission pipelines, municipal water-storage facilities, gas or oil-collection lines, or water and sewage lines; or

(c) Five hundred (500) feet of an underground mine not totally abandoned, except with the concurrence of the Mine Safety and Health Administration of the United States Department of Labor.

Section 7. Blasting Standards. (1) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, or change in the course, channel, or availability of ground or surface waters outside the permit area.

(2) In all blasting operations, except as otherwise stated, the maximum peak particle velocity of the ground motion in any direction shall not exceed one (1) inch per second at the immediate location of any dwelling, public building, school, church, or commercial or institutional building. The department may reduce the maximum peak particle velocity allowed if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors.

(3) The maximum peak particle velocity of ground motion does not apply to property inside the permit area that is owned or leased by the permittee.

(4) The maximum weight of explosives to be detonated within any eight (8) millisecond period shall be determined by the formula $W = (D/60)^2$, where W = the maximum weight of explosives, in pounds, that can be detonated in any eight (8) millisecond period, and D = the distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building. If the blasting is conducted in accordance with this equation, the department will consider the vibrations to be within the one (1) inch per second limit.

(5) If on a particular site the peak particle velocity continuously exceeds one-half ($\frac{1}{2}$) inch per second after a period of one (1) second following the maximum ground particle velocity, the department shall require the blasting procedures to be revised to limit the ground motion.

Section 8. Seismograph Measurements. (1) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of one (1) inch per second is not exceeded, the equation in Section 7(4) need not be used. However, if the equation is not being used, a seismograph record shall be obtained for every shot. The seismograph record shall include:

(a) The seismograph reading, including the exact location of the seismograph and its distance from the blast;

(b) The name of the person taking the seismograph reading; and

(c) The name of the person and firm analyzing the seismograph record.

(2) The use of a modified equation to determine maximum weight of explosives for blasting operations at a particular site may be approved by the department on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. However, in no case shall the department approve the use of a modified equation where the peak particle velocity limit of one (1) inch per second required in Section 7(2) would be exceeded.

(3) The department may require a seismograph recording of any or all blasts.

Section 9. Record of Blasting Operations. A record of each blast, including seismograph records, shall be retained for at least three (3) years and shall be available for inspection by the department and the public on request. The record shall contain the following data:

(1) Name of permittee, operator, or other person conducting the blast;

(2) Location, date, and time of blast;

(3) Name, signature, and license number of blaster-in-charge;

(4) Direction and distance, in feet, to nearest dwelling, school, church, or commercial or institutional building neither owned nor leased by the permittee;

(5) Weather conditions;

(6) Type of material blasted;

(7) Number of holes, burden, and spacing;

(8) Diameter and depth of holes;

(9) Types of explosives used;

(10) Total weight of explosives used;

(11) Maximum weight of explosives detonated within any eight (8) millisecond period;

(12) Maximum number of holes detonated within any eight (8) millisecond period;

(13) Methods of firing and type of circuit;

(14) Type and length of stemming;

(15) If mats or other protections were used;

(16) Type of delay detonator used, and delay periods used; and

(17) Seismograph records, if required pursuant to Section 8 of this regulation.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 1:100. Topsoil handling.

RELATES TO: KRS 350.415

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to the handling of topsoil.

Section 1. To prevent topsoil from being contaminated by spoil or waste materials, the topsoil shall be removed from the area to be disturbed as a separate operation. The topsoil shall be immediately redistributed on the areas graded to the approved postmining configuration unless storage of the topsoil by stockpiling or other means is approved by the department. If sufficient graded areas are not immediately available for topsoil redistribution, and the stockpiling of topsoil is approved by the department, the topsoil shall be segregated, stockpiled, and protected from wind and water erosion and from contaminants which would lessen its capability to support vegetation.

Section 2. Topsoil Removal. All topsoil to be salvaged shall be removed before any drilling for blasting, mining, or other surface disturbance.

(1) All topsoil shall be removed unless the use of alternative materials is approved by the department in accordance with Section 6 of this regulation. The size of the area from which topsoil may be removed at any one time shall be limited if the removal of the topsoil would result in erosion that may cause air or water pollution. The department may specify methods of treatment to control erosion of exposed overburden.

(2) All of the A horizon as identified by soil surveys shall be removed as provided in this section and then replaced on disturbed areas as the surface soil layers. Where the A horizon is less than six (6) inches, a six (6) inch layer that includes the A horizon and the unconsolidated material immediately below the A horizon (or all unconsolidated material if the total available is less than six (6) inches), shall be removed and the mixture segregated and replaced as the surface soil layer.

(3) The department may require that the B horizon or portions of the C horizon or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as subsoil where necessary to obtain productivity consistent with the approved postmining land use.

Section 3. Topsoil Redistribution. (1) After the final grading has been completed and before the topsoil is replaced, the regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration.

(2) The topsoil shall be redistributed on the regraded area in a manner which:

(a) Achieves an approximate uniform thickness consistent with postmining land uses;

(b) Prevents excessive compaction of the spoil and topsoil; and

(c) Protects the topsoil from wind and water erosion before it is seeded and planted.

Section 4. Topsoil Storage. Stockpiled topsoil shall be placed on stable areas within the permit area. The locations should be such that the stockpiled topsoil will not be disturbed or be exposed to excessive water, wind erosion, or contaminants which would lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. Stockpiled topsoil shall be protected either by a vegetative cover or by other methods demonstrated to provide equal protection, including but not limited to chemical binders and mulching. Unless approved by the department, stockpiled topsoil shall not be moved until it is moved for redistribution on a disturbed area.

Section 5. Nutrients and soil amendments, in appropriate amounts and analyses as determined by soil tests, shall be applied to the surface soil layer so that it will support the postmining land use requirements and revegetation requirements of this chapter.

Section 6. Alternative Materials. When the existing topsoil is of insufficient quantity or poor quality for sustaining vegetation, the department may approve the use of selected overburden materials, alternative soil materials or soil amendments as alternatives or supplements to topsoil, where the resulting soil medium is equally or more suitable for vegetation, provided the requirements of this section are met.

(1) The applicant shall demonstrate by the results of chemical and physical analyses that the selected alternative material or alternative topsoil mixture is equally or more suitable than the original topsoil for restoring land capability and productivity. These analyses shall include determination of pH, percent organic material, nitrogen, phosphorus, potassium, texture class, water holding capacity, and such other analyses as the department may require. The department may also require the use of field-site trials or greenhouse tests to demonstrate the feasibility of using such alternative materials.

(2) Chemical and physical analyses and results of field-site trials and greenhouse tests shall be accompanied by a certification from a qualified soil scientist or agronomist.

(3) The alternative material shall be removed, segregated, and replaced in conformance with this section.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:110. Revegetation.

RELATES TO: KRS 350.095, 350.435

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for the revegetation of lands affected by strip mining.

Section 1. General. (1) The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support the planned postmining uses of the land approved according to 405 KAR 1:070. For areas designated as prime farmland, the reclamation procedures of 405 KAR 1:250 shall apply.

(2) Revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with approved land uses. The vegetative cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. If both the pre- and postmining land use is intensive agriculture, planting of the crops normally grown will meet the requirement. Vegetative cover will be considered of the same seasonal variety when it consists of mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.

(3) On federal lands, the surface management agency shall be consulted for approval prior to revegetation regarding what species are selected, and following revegetation, to determine when the area is ready to be used.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use, or are necessary to achieve a quick, temporary, and stabilizing cover. Such species substitution shall be approved by the department. Introduced species shall meet the applicable state and federal seed or introduced species statutes, and shall not include poisonous or potentially toxic species.

Section 3. Timing of Revegetation. (1) Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate.

(2) Any disturbed areas, except water areas and surface areas of roads that are approved under 405 KAR 1:070 as part of the postmining land use, which have been graded shall be seasonably seeded with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established.

(3) When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of

the postmining land use, form in regraded areas as specified in 405 KAR 1:130, additional regrading or other stabilization practices will be required before seeding and planting.

Section 4. Mulching. (1) Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth, and do not interfere with the post-mining use of the land.

(2) Mulch shall be anchored to the soil surface where appropriate, to ensure effective protection of the soil and vegetation.

(3) Application rates of mulch shall be consistent with those rates submitted on the revegetation plan except as otherwise approved by the department.

(4) Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the department that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining use.

Section 5. Methods of Revegetation. (1) The permittee shall use technical publications or the results of laboratory and field test approved by the department to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The department shall approve species selection and planting plans.

(2) Where hayland or pasture is to be the postmining land use, the species of grasses, legumes, browse, trees, or forbs for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, distribution, and regenerative capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The department, in consultation with the permittee and the landowner or in concurrence with the governmental land-managing agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.

(3) Where forest is to be the postmining land use, the permittee shall plant trees adapted to local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, and regeneration capabilities native to the area.

(4) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate state and federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

Section 6. Standards for Measuring Success of Revegetation. (1) Success of revegetation shall be measured on the basis of reference areas approved by the department. Reference areas mean land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally. The reference areas must be representative of

geology, soils, slope, aspect, and vegetation in the permit area. Management of the reference area shall be comparable to that which will be required for the approved postmining land use of the area to be mined. The department shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area.

(2) The ground cover of living plants on the revegetated area shall be equal to the ground cover of living plants of the approved reference area for a minimum of two (2) growing seasons. The ground cover shall not be considered equal if it is less than ninety (90) percent of the ground cover of the reference area for any significant portion of the mined area. Exceptions may be authorized by the department for:

(a) Previously mined areas that were not reclaimed to the standards required by this chapter prior to May 3, 1978. The ground cover of living plants for such areas shall not be less than required to control erosion, and in no case less than that existing before redisturbance.

(b) Areas to be developed immediately for industrial or residential use. The ground cover of living plants shall not be less than required to control erosion. As used in this paragraph, "immediately" means less than two (2) years after regrading has been completed for the area to be used; and

(c) Areas to be used for agricultural cropland purposes. Success in revegetation of cropland shall be determined on the basis of crop production from the mined area compared to the reference area. Crop production from the mined area shall be equal to that of the approved reference area for a minimum of two (2) growing seasons. Production shall not be considered equal if it is less than ninety (90) percent of the production of the reference area for any significant portion of the mined area.

(3) Species diversity, distribution, seasonal variety, and vigor shall be evaluated on the basis of the results which could reasonably be expected using the methods of revegetation approved under Section 6 of this regulation.

Section 7. Seeding of Stockpiled Topsoil. Topsoil stockpiled in compliance with 405 KAR 1:100 must be seeded or planted with an effective cover of nonnoxious, quick growing annual and perennial plants during the first normal period for favorable planting conditions, or protected by other approved measures.

LOWELL E. BRANDENBURG, Commissioner

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APPROVED: EUGENE F. MOONEY, Secretary

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:120. Access roads, haul roads, and other transport facilities.

RELATES TO: KRS Chapter 350

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for design, construction, maintenance and reclamation of access roads, haul roads and other transport facilities.

Section 1. General. (1) Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by state or federal law.

(2) The effluent limitations of 405 KAR 1:170 shall not apply to drainage from access and haul roads located outside the disturbed area, as defined in 405 KAR 1:170, unless otherwise specified by the department.

Section 2. Construction. All access and haul roads shall be constructed in accordance with the requirements of this section.

(1) Roads shall not be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding.

(2) All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion.

(3) Roads shall not be located in active stream channels.

(4) Stream fords are prohibited unless they are specifically approved by the department as temporary routes across dry streams that will not adversely affect sedimentation and will not be used for coal haulage.

(5) Other stream crossings shall be made using bridges, culverts, or other structures designed and constructed to meet the requirements of this regulation.

(6) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the grade restrictions of this subsection or other grades determined by the department to be necessary to control erosion:

(a) The overall sustained grade shall not exceed 1v:10h ten (10) percent;

(b) The maximum grade greater than ten (10) percent shall not exceed 1v:5h (fifteen (15) percent) for more than 300 feet.

(c) There shall not be more than 300 feet of grade exceeding ten (10) percent within each 1,000 feet.

(7) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used.

(8) Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(9) All fill slopes and earth cut slopes shall be seeded in accordance with 405 KAR 1:110, Section 1(2).

Section 3. Drainage. (1) All access and haul roads shall

be adequately drained using structures such as, but not limited to, ditches, water barriers, pipes, culverts, cross drains, and ditch relief drains.

(2) For access and haul roads that are to be maintained for more than one (1) year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event.

(3) Ditch-relief and cross drains shall be spaced according to grade.

(4) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(5) Drainage ditches shall be provided at the toe of all cut slopes formed by the construction of roads.

(6) Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures.

Section 4. Maintenance. (1) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping, or surfacing.

(2) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

Section 5. Removal and Reclamation. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of 405 KAR 1:130 and 405 KAR 1:110, unless retention of a road is approved as part of a postmining land use under 405 KAR 1:070 as being necessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured.

Section 6. Other Transport Facilities. Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law.

LOWELL E. BRANDENBURG, Commissioner

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APPROVED: EUGENE F. MOONEY, Secretary

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DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:130. Backfilling and grading.

RELATES TO: KRS 350.093, 350.410, 350.450

PURSUANT TO: KRS 13.082, 350.028, 350.093, 350.450

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to the backfilling and grading of areas affected by strip mining operations.

Section 1. In order to achieve the approximate original contour, the permittee shall, except as provided in this regulation, transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. The postmining graded slopes must approximate the premining natural slopes in the area as defined in Section 2(2) of this regulation.

Section 2. Slope Measurements. (1) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the department in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed; or, where this is impractical, at locations specified by the department. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the department to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from topographic maps showing contour lines having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(2) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the department. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

Section 3. Final Graded Slopes. (1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to Section 2(1) or any lesser slope specified by the department based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform.

(2) The requirements of this section may be modified by the department where the mining is re-affecting previously mined lands that have not been restored to the standards of this regulation and sufficient spoil is not available to return to the slope determined according to Section 2(1). Where such modifications are approved, the permittee shall, as a minimum, be required to:

(a) Retain all overburden and spoil on the solid portion of existing or new benches; and

(b) Backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed the angle of repose or such lesser slope as is necessary to assure stability.

(3) On approval by the department and in order to conserve soil moisture, ensure stability, and control erosion of final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the postmining land use approved under 405 KAR 1:070, and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed twenty (20) feet unless specifically approved by the department as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(b) The vertical distance between terraces shall be as specified by the department to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (fifty (50) percent). Out slopes which exceed 1v:2h (fifty (50) percent) may be approved if they have a minimum static safety factor of 1.5 or more and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on terraces only when approved by the department.

Section 4. Small Depressions. If approved by the department, small depressions may be constructed to minimize erosion, conserve soil moisture, or promote revegetation. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than one (1) cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard.

Section 5. Permanent Impoundments. If approved by the department permanent impoundments may be retained on mined and reclaimed areas provided all highwalls are eliminated by grading to approximate original contour and the provisions of 405 KAR 1:070 for postmining land use, 405 KAR 1:160 for protection of the hydrologic system, and 405 KAR 1:220 with regard to permanent impoundments are met. No impoundments shall be constructed on top of areas in which excess materials are deposited pursuant to 405 KAR 1:140 with regard to the disposal of excess spoil material, or in which acid-forming, toxic-forming or waste materials are deposited pursuant to 405 KAR 1:150. Impoundments shall not be used to meet the requirements of Section 9 of this regulation with regard to covering of exposed coal seams, acid and toxic-forming materials, or waste materials.

Section 6. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas in accordance with 405 KAR 1:110 with regard to revegetation. The department shall

specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Section 7. Thin and Thick Overburden Areas. (1) Applicability. The provisions of this section shall apply only when operations cannot be carried out to comply with the requirements of Sections 1, 2 and 3 of this regulation with regard to achieving approximate original contour.

(2) Definitions:

(a) "Initial thickness" is the sum of the overburden thickness and coal thickness.

(b) "Final thickness" is the product of the overburden thickness times the bulking factor to be determined for each mine area.

(c) "Thin overburden" exists when the final thickness is less than 0.8 of the initial thickness.

(d) "Thick overburden" exists when the final thickness is greater than 1.2 of the initial thickness.

(3) Thin overburden areas. In strip mining operations carried out continuously in the same limited pit area for more than one (1) year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials, as defined in Section 8, is demonstrated to be insufficient to achieve approximate original contour, operations shall be conducted to meet, at a minimum, the standards of this subsection.

(a) Transport, backfill, and grade, using all available spoil and suitable waste materials, as defined in Section 8 of this regulation, from the entire mine area to attain the lowest practicable stable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.

(b) Eliminate highways by grading or backfilling to stable slopes not exceeding 1v:2h (fifty (50) percent), or such lesser slopes as specified by the department to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(c) Transport, backfill, grade and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.

(d) Transport, backfill, and grade to ensure the impoundments are constructed only where it has been demonstrated to the satisfaction of the department that all requirements of 405 KAR 1:160 have been met and that the impoundments have been approved by the department as meeting the requirements of this chapter and all other applicable federal and state laws and regulations.

(4) Thick overburden areas. In strip mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour, operations shall be conducted to meet, at a minimum, the standards of this subsection.

(a) Transport, backfill, and grade all spoil and suitable wastes not required to achieve approximate original contour in the strip mining area to the lowest practicable grade.

(b) Deposit, backfill, and grade excess spoil and suitable wastes only within the permit area and dispose of such materials in conformance with this chapter.

(c) Transport, backfill, and grade excess spoil and suitable wastes to maintain the hydrologic balance in accordance with this chapter and to provide long-term stability.

(d) Transport, backfill, grade, and revegetate suitable wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmin-

ed areas surrounding the permit area.

(e) Eliminate all highwalls and depressions except as stated in Section 5 of this regulation by backfilling with spoil and suitable waste materials.

Section 8. Use of Waste Materials as Fill. Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area are used for fill material, it must be demonstrated to the department by hydrogeological means and chemical and physical analyses that these waste materials are suitable for use as fill material and that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

Section 9. Covering and Stabilization. (1) All exposed coal seams remaining after mining and any acid-forming, toxic-forming, combustible materials, or any other waste materials identified by the department that are exposed, used, or produced during mining shall be covered with a minimum of four (4) feet of non-toxic and non-combustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to pose a threat of water pollution or otherwise violate the provisions of 405 KAR 1:160 with regard to protection of the hydrologic system.

(2) Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or subsurface waters and wherever necessary to ensure the stability of the backfilled materials. The method of compacting backfill material and the design specifications shall be approved by the department before the acid-forming or toxic-forming materials are covered.

Section 10. Grading along the contour. All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, in accordance with the provisions of 405 KAR 1:100 (topsoil handling), shall be done along the contour unless such grading would be hazardous to equipment operators. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

Section 11. Steep Slopes. All operations on steep slopes shall comply with the requirements of this regulation and with the requirements of 405 KAR 1:230 of this chapter with regard to steep slope mining. Slopes of twenty (20) degrees or more shall be considered as steep slopes, and the department may define such flatter slopes to be steep slopes as are necessary to achieve the purposes of this chapter.

Section 12. Mountaintop Removal. The requirements of this regulation with regard to backfilling and grading to achieve approximate original contour shall not apply to strip mining operations which remove entire coal seams in the upper part of a mountain, ridge or hill by removing all of the overburden, provided, however:

(1) That all requirements of 405 KAR 1:240 with regard to mountaintop removal shall be met; and

(2) The requirements of this regulation, in Section 4 with

regard to small depressions, and Section 5 with regard to permanent impoundments, shall be met.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:140. Disposal of excess spoil materials.

RELATES TO: KRS 350.440

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for the disposal of excess spoil monitoring.

Section 1. General. Excess spoil material which is not required in backfilling and grading to achieve the approximate original contour shall be transported to and placed in disposal areas other than the mine workings or excavations, provided that such transport and placement are conducted in a controlled (engineered) manner approved by the department, and provided the requirements of this regulation are met.

Section 2. Disposal of Spoil in Valley Fills or Head-of-Hollow Fills. Excess spoil to be disposed of in valley fills or head-of-hollow fills shall be placed in accordance with the provisions of this section and any other applicable provisions of this chapter as follows:

(1) The disposal areas shall be within the permit area, and they must be approved by the department as suitable for construction of fills in accordance with the requirements of this regulation.

(2) The disposal site shall be near the ridge top of a valley selected to increase the stability of the fill and to reduce the drainage area above the fill. Where possible, spoil shall be placed above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer and approved by the department.

(4) All organic material shall be removed from the

disposal area and the topsoil must be removed and segregated pursuant to 405 KAR 1:100 before the material is placed in the disposal area. However, if approved by the department, organic material may be used as mulch or may be included in the topsoil.

(5) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope designated by the department based on local conditions, measures such as keyway cuts (excavation to stable bedrock) or rock the buttresses shall be constructed to stabilize the fill.

(6) A system of underdrains constructed of durable rock shall be installed along the natural drainage system, shall extend from the toe to the head of the fill and contain lateral drains to each area of potential drainage or seepage. In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. No rock shall be used in underdrains if it tends to easily disintegrate and thereby clog the drain or if it is acid-forming or toxic-forming. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Drain size in feet	
		Width	Height
Less than 1 million cubic yards	Sandstone	10	4
	Shale	16	8
More than 1 million cubic yards	Sandstone	16	8
	Shale	16	8

(7) Spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the department in lifts that are less than four (4) feet thick in order to achieve the densities designed to ensure mass stability, to prevent mass movement, to avoid contamination of the rock underdrain and to prevent formation of voids. The final configuration of the fill must be suitable for postmining land uses approved in accordance with 405 KAR 1:070.

(8) Terraces shall be constructed to stabilize the face of the fill at intervals not to exceed fifty (50) feet measured vertically between terraces. The width of the terrace shall not be less than twenty (20) feet.

(9) The tops of the fill and each terrace shall be graded no steeper than 1v:20h (five (5) percent) and shall be constructed to drain surface water to the sides of the fill where stabilized surface channels shall be established off the fill to carry drainage away from the fill. Drainage shall not be directed over the outslope of the fill unless approved by the department.

(10) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill by approved structures leading into watercourses.

(11) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The department may require a flatter slope.

(12) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods and at least quarterly throughout construction to assure removal of all

organic material and topsoil, placement of underdrainage systems, and proper construction of terraces according to the approved design. The registered engineer or other qualified professional specialist shall provide to the department a certified report after each inspection that the fill has been constructed as specified in the design approved by the department.

(13) Waste materials shall not be placed in valley fills or head-of-hollow fills which are used for disposal of excess spoil, except as specifically authorized by the department.

Section 3. Disposal of Spoil in Areas other than Valley Fills or Head-of-Hollow Fills. Excess spoil to be disposed of in areas other than valley fills or head-of-hollow fills shall be placed in accordance with the provisions of this section and any other applicable provisions of this chapter.

(1) The disposal areas shall be within the permit area, and they must be approved by the department as suitable for construction of fills in accordance with the requirements of this regulation.

(2) The disposal areas shall be located on the most moderate sloping and naturally stable areas available as approved by the department. Where possible, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(4) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope designated by the department based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

(5) The disposal area shall not contain springs, natural water courses, or wet weather seeps unless underdrains and lateral drains are designed and constructed in such a manner that infiltration of the water into the spoil pile will be prevented.

(6) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to 405 KAR 1:100 before the spoil material is placed in the disposal area. However, if approved by the department, organic material may be used as mulch or may be included in the topsoil.

(7) The spoil shall be transported and placed in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure long-term stability. The final configuration of the fill must be suitable for postmining land uses approved in accordance with 405 KAR 1:070. Terraces shall not be constructed unless approved by the department.

(8) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction or terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide to the department a certified report after each inspection that the fill has been constructed as specified in the design approved by the department.

(9) If any portion of the fill interrupts, obstructs, or encroaches upon any natural drainage channel, the entire fill is classified as a valley or head-of-hollow fill and must be

designed and constructed in accordance with the requirements of Section 2 of this regulation.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:150. Acid and toxic materials and waste material.

RELATES TO: KRS 350.410, 350.420

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for the handling of acid and toxic materials and waste material.

Section 1. General. Drainage from acid-forming and toxic-forming materials in soil, overburden, spoil, waste, and in other materials, shall be prevented from entering ground water and surface water. Methods of prevention may include but shall not be limited to:

(1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgement of the department, will be toxic to vegetation or that will adversely affect water quality if not treated or buried.

(2) Preventing or removing water from contact with acid- or toxic-producing deposits.

(3) Burying or otherwise treating all toxic or harmful materials within thirty (30) days, if such materials are subject to wind and water erosion, or within a lesser period designated by the department. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water.

(4) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of this chapter.

(5) All acid-forming or toxic-forming materials, combustible materials, coal preparation waste materials, or other waste materials identified by the department, that are exposed, used, or produced during mining shall be covered with a minimum of four (4) feet of nontoxic and noncombustible material. If necessary, such materials shall be treated to neutralize toxicity in order to prevent water pollution or sustained combustion and to minimize adverse

effects on plant growth and land uses. Where necessary to protect against upward migration of salts or exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the department shall specify greater depths of cover using nontoxic material.

(6) All methods of materials placement and compaction pursuant to this section shall be approved by the department.

(7) Waste materials used as fill shall meet the provisions of this regulation and the provisions of 405 KAR 1:130, Section 8.

Section 2. Coal waste. (1) Coal waste ponds and other coal waste materials shall be maintained according to the provisions of this regulation, and the provisions of 405 KAR 1:210 shall also apply.

(2) Waste materials from coal preparation plants shall be buried or otherwise treated within ninety (90) days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with the provisions of this regulation and the provisions of 405 KAR 1:130 with respect to backfilling and grading.

Section 3. The department may require other actions necessary to assure that the provisions of this regulation are met.

LOWELL E. BRANDENBURG, Commissioner

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:160. Protection of the hydrologic system.

RELATES TO: KRS 350.420

PURSUANT TO: KRS 13.082, 350.028, 350.420

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for minimizing disturbances to the hydrologic system.

Section 1. General. (1) Strip mining and reclamation operations shall be planned and conducted in such manner as to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from strip mining and reclamation operations, both on and off site.

(2) Changes in water quality and quantity, in the depth

to ground water, and in the location of surface water drainage channels shall be minimized such that the postmining land use of the disturbed land is not adversely affected and applicable federal and state statutes and regulations are not violated.

(3) Operations shall be conducted so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize practices which will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities. Such practices include, but are not limited to, stabilizing disturbed areas through grading, diverting runoff, achieving quick growth stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching, sealing acid-forming and toxic-forming materials and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment, necessary water treatment facilities shall be constructed, operated and maintained by the permittee for as long as treatment is required.

Section 2. Sealing of Surface Openings. (1) Vertical holes such as boreholes, shafts and walls, and approximately horizontal holes such as auger holes, shall be cased, sealed or otherwise managed to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality.

(2) All boreholes that are within the permit area but are outside the area of strip mining operations or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the department, unless the boreholes have been approved for use in monitoring.

(3) **Water Rights and Replacement.** The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption approximately resulting from strip mining operations by the permittee.

LOWELL E. BRANDENBURG, Commissioner

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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 1:170. Water quality standards and surface water monitoring.

RELATES TO: KRS 350.420

PURSUANT TO: KRS 13.082, 350.028, 350.420

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth water quality standards and requirements for surface water monitoring.

Section 1. Water Quality Standards. (1) For the purpose of this regulation, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed and the upstream area is not otherwise disturbed by the mining operation. All sedimentation ponds required shall be constructed in accordance with this chapter and in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water. Sedimentation ponds shall be certified by a qualified registered engineer as having been constructed as designed and as approved by the department.

(2) The discharges from areas disturbed by strip mining and reclamation operations must meet all applicable federal and state laws and regulations and at a minimum in the following numerical effluent limitations:

Effluent Limitations, in Milligrams per Liter, mg/l, except for pH

Effluent characteristics	Maximum allowable*	Average of daily values for 30 consecutive discharge days*
Iron, total.....	7.0	3.5
Manganese, total.....	4.0	2.0
Total suspended solids	70.0	35.0
pH**	Within the range 6.0 to 9.0	

* Based on representative sampling.

** Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth, the department may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

(3) Any overflow or other discharge of surface water from the disturbed area demonstrated by the permittee to result from a precipitation event larger than a ten (10) year, twenty-four (24) hour frequency event will not be subject to the effluent limitations of subsection (2) of this section.

(4) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or state laws or regulations or the effluent limitations listed in subsection (2) of this section.

(5) If the pH of waters discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the department shall be installed, operated, and maintained. If the department finds that small and infrequent treatments are required to meet effluent limitations and do not necessitate

use of an automatic neutralization process, and that the mine normally produces less than 500 tons of coal per day, then the department may approve the use of a manual system if the department finds that consistent and timely treatment can be assured by the permittee.

Section 1. Surface Water Monitoring. (1) A surface water monitoring program which meets the requirements of this section shall be prepared and submitted with the permit application, and this program shall be subject to the approval of the department. The program shall:

(a) Provide adequate monitoring of all discharge from the disturbed area;

(b) Provide adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of water flow, pH, total iron, total manganese, and total suspended solids and, if requested by the department, any other parameters characteristic of the discharge;

(c) Provide monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

(d) Provide an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136;

(e) Provide a regular report of all measurements to the department within sixty (60) days of sample collection, unless violations of permit conditions occur in which case the department shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulation by a federal or state permit issued in compliance with the Federal Water Pollution Control Act Amendments of 1972 (33 U. S. C. 1251-1378) a copy of the reporting form supplied to meet the permit requirements may be submitted to the department to satisfy the reporting requirements of this regulation if the data meet the sampling frequency and other requirements of this section.

(2) After disturbed areas have been regraded and stabilized in accordance with the provisions of this chapter, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirements of this chapter to minimize disturbance to the prevailing hydrologic balance and to attain the approved postmining land use. These data shall provide a basis for approval by the department for removal of water quality or flow control systems and for determining when the requirements of this regulation are met. The department shall determine the nature of data, frequency of collection, and reporting requirements.

(3) Equipment, structures, and other measures necessary to adequately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained, and operated and shall be removed when no longer required.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

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DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:180. Ground water.

RELATES TO: KRS 350.420

PURSUANT TO: KRS 13.082, 350.028, 350.420

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for protection of the ground water system and ground water monitoring.

Section 1. Recharge Capacity of Reclaimed Lands. The disturbed area shall be reclaimed to restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the ground water system. The recharge capacity should be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance at the mined area and in associated off-site areas. The permittee shall be responsible for monitoring according to Section 3 of this regulation to ensure that operations conform to this requirement.

Section 2. Ground Water Systems. Backfilled materials shall be placed to minimize adverse effects on ground water flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to Section 3 of this regulation to ensure that operations conform to this requirement.

Section 3. Monitoring. Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the department to determine the effects of strip mining and reclamation operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells that can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The department may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the department, additional hydrologic tests, such as infiltration tests and aquifer tests, must be undertaken by the permittee to demonstrate compliance with Sections 1 and 2 of this regulation.

LOWELL E. BRANDENBURG, Commissioner
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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 1:190. Diversions of surface and underground flows.

RELATES TO: KRS 350.420

PURSUANT TO: KRS 13.082, 350.028, 350.420

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements relating to diversions of surface and underground water flows.

Section 1. Diversions of Overland Flows. In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, if required or approved by the department, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met:

(1) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to streamflow or to runoff outside the permit area to the extent possible using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(2) Temporary diversion structures are those used during mining and reclamation, and when no longer needed these structures shall be removed and the areas reclaimed. Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one (1) year recurrence interval, or a larger event as specified by the department. The design criteria must assure adequate protection of the environment and public during existence of the temporary diversion structure.

(3) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the department and other appropriate state and federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year occurrence interval, or a larger event as specified by the department. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the department.

Section 2. Stream Channel Diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the department and they are in compliance with local, state, and federal statutes and regulations. When streamflow is allowed to be diverted, a new stream channel shall be designed and constructed to meet the requirements of this section.

(a) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to stream-flow or to runoff outside the

permit area to the extent possible using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the department for temporary diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.

(b) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a ten (10) year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the department.

(c) Fish and wildlife habitat and water and vegetation of significant value for wildlife shall be protected in consultation with appropriate state and federal fish and wildlife management agencies.

(2) All temporary diversion structures shall be removed, and the affected land regraded and revegetated consistent with the requirements of this chapter regarding backfilling, grading and revegetation. At the time such diversions are removed, the permittee shall insure that downstream water treatment facilities previously protected by the diversion are either modified or removed to prevent overtopping or failure of the facilities.

Section 3. Stream Buffer Zone. No land within 100 feet of an intermittent or perennial stream shall be disturbed by strip mining and reclamation operations unless the department specifically authorizes operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 1:080 regarding signs and markers.

Section 4. Discharge Structures. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

Section 5. Discharge of Waters into Underground Mines. Surface and ground waters shall not be discharged or diverted into underground mine workings.

LOWELL E. BRANDENBURG, Commissioner
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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 1:200. Sediment control measures.

RELATES TO: KRS 350.420

PURSUANT TO: KRS 13.082, 350.028, 350.420

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for sediment control measures.

Section 1. Sediment Control Required. Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to streamflow or to runoff outside the permit area to the extent possible using the best technology currently available.

(1) Sediment control measures include practices carried out within and adjacent to the disturbed area. For the purpose of this regulation, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed and the upstream area is not otherwise disturbed by the mining operation. The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the sediment. Sediment control measures consist of the utilization of proper mining, reclamation methods, and sediment control practices (singly or in combination) including but not limited to:

(a) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and timely revegetation.

(b) Consistent with the requirements of this chapter, shaping the backfill material to promote a reduction of the rate and volume of runoff;

(c) Retention of sediment within the pit and disturbed area;

(d) Diversion of overland and channelized flow from undisturbed areas around or in protected crossings through the disturbed area;

(e) Utilization of straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume or entrap sediment; and

(f) Sedimentation ponds.

(2) All surface drainage from the disturbed area including disturbed areas which have been graded, seeded, or planted shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed area has met the water quality requirements and the revegetation requirements of these regulations have been met. The department may grant exemption from this requirement only when the disturbed drainage area within the total disturbed area is small and it is demonstrated that sedimentation ponds are not necessary to meet the effluent limitations and to maintain water quality in downstream receiving waters. All sedimentation ponds required shall be constructed in accordance with this chapter and in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water. Sedimentation ponds shall be certified by a qualified registered engineer as having been constructed as designed and as approved by the department. Sedimentation ponds may be used in-

dividually or in series, should be located as near as possible to the disturbed area and where possible out of major stream courses, and shall (either individually or in series) meet the following criteria:

(a) Sedimentation ponds must provide twenty-four (24) hour theoretical detention time for the inflow or runoff entering the ponds from a ten (10) year, twenty-four (24) hour precipitation event. Runoff diverted, in accordance with 405 KAR 1:170 away from the disturbed drainage areas need not be considered in sedimentation pond design. In determining the runoff volume the characteristics of the mine site, reclamation procedures, and on-site sediment control practices shall be considered.

(b) Upon approval of the department theoretical detention time may be reduced to not less than ten (10) hours, as demonstrated by the applicant, equal to the improvement in sedimentation removal efficiency as a result of pond design including but not limited to pond configuration, inflow-outflow facilities, and their relative location, baffles to decrease inflow velocity and short circuiting, a surface area sufficient to achieve the sediment trap efficiency necessary to meet effluent limitations, and sediment control measures as provided in this regulation.

(c) The department may approve a detention time less than the time required by paragraphs (a) or (b) of this subsection when the applicant has demonstrated that the size distribution or the specific gravity of the suspended matter or the utilization of chemical treatment or flocculation are such that the effluent limitations can be met. The detention time shall be stipulated.

(3) An additional sediment storage volume must be provided equal to 0.2 acre-feet for each acre of disturbed area within the upstream drainage area. Upon approval of the department, the sediment storage volume may be reduced in an amount, as demonstrated by the applicant, equal to the sediment removed by other appropriate sediment control measures such as those identified in subsection (1) of this section, or by lesser sediment yields as evidenced by empirical data for runoff characteristics.

(4) Ponds may be of the permanent pool or self-dewatering type. Dewatering-type ponds shall use a siphon or other dewatering methods approved by the department to prevent discharges of pollutants within the design flow.

(5) Spillway systems shall be properly located to maximize the distances from the point of inflow into the pond to maximize detention times. Spillway systems shall be provided to safely discharge the peak runoff from a precipitation event with a twenty-five (25) year recurrence interval, or larger event as specified by the department.

(6) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations. Sediment removal shall be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and ground water quality. Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas in accordance with 405 KAR 1:100.

(7) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the additional requirements of this subsection shall be met.

(a) An appropriate combination of principal and emergency spillways shall be provided to safely discharge

the runoff resulting from a 100-year, six (6) hour precipitation event, or larger event as specified by the department.

(b) Ponds shall be designed and constructed with an acceptable static safety factor of at least 1.5 at maximum design flood elevation of the pool to ensure embankment slope stability.

(c) The minimum top width of the embankment shall not be less than the quotient of $(H + 35)/5$ where H is the height of the embankment as measured from the upstream toe to the top of the embankment.

(d) Ponds shall have appropriate barriers to control seepage along conduits that extend through the embankment.

(8) All ponds shall be designed, constructed and inspected under the supervision of a registered professional engineer who after construction shall certify that the structure was constructed according to his design and as approved by the department.

(9) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR 77.216.3.

(10) All ponds shall be removed and the affected land regraded and revegetated consistent with the requirements of this chapter, unless the department approves retention of the ponds pursuant to 405 KAR 1:220 with regard to permanent impoundments.

(11) In the design of sedimentation ponds pursuant to this regulation, the responsible design engineer shall determine the structure hazard classification as set forth in 405 KAR 1:020 and the structure hazard classification shall be clearly shown on the first sheet of the design drawings.

(12) Sedimentation ponds classified (B) - moderate hazard or (C) - high hazard shall be approved by the department, designed, constructed and maintained according to the provisions of KRS 151.250 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:210 . Coal waste dams.

RELATES TO: KRS 350.425

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for the design, construction and reclamation of coal waste dams.

Section 1. General. No waste material shall be used in or impounded by existing or new dams without the approval of the department. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this regulation.

Section 2. Construction of Dams. (1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of 30 CFR 77.216(a) shall be approved by the department before construction and shall contain the minimum plan requirements established by the Mine Safety and Health Administration pursuant to 30 CFR 77.216-2.

(3) Construction requirements are as provided in this subsection:

(a) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the department.

(b) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least three (3) feet to avoid overtopping by wind and wave action.

(c) Dams shall have minimum safety factors as provided in the following table:

Case	Loading Condition	Minimum Safety Factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation	1.5
III	Steady seepage from spillway or decant crest	1.5
IV	Earthquake (cases II and III with seismic loading)	1.0

(d) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in this regulation and for all increments of construction.

(e) Seepage through the dam, foundation, and

abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(f) Allowances shall be made for settlement of dams and foundations so that the required freeboard will be maintained.

(g) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated within ten (10) days by spillways or decants of ninety (90) percent of the volume of water stored during the design precipitation event.

(h) During construction of dams subject to this regulation the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(i) A permanent identification marker, at least six (6) feet high that shows the dam number assigned pursuant to 30 CFR 77.216-1 and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within thirty (30) days of certification of design pursuant to this regulation.

(4) All dams, including those not meeting the size or other criteria of 30 CFR 77.216-1, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mine Safety and Health Administration regulations pursuant to 30 CFR 77.216-3.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this regulation shall be certified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual certification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the department before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the department approves retention of such dams as being compatible with an approved postmining land use.

(9) Coal waste dams constructed pursuant to this regulation shall be approved by the department, designed, con-

structed and maintained according to the provisions of KRS 151.250 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:220. Permanent impoundments.

RELATES TO: KRS 350.455

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for permanent water impoundments.

Section 1. General Requirements. The permittee may construct, if authorized by the department, permanent water impoundments on mining sites only when they are adequately demonstrated to be in compliance with the requirements of this chapter in addition to the following requirements:

(1) The size of the impoundment is adequate for its intended purposes.

(2) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006).

(3) The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable federal and state law.

(4) The level of water will be reasonably stable.

(5) Final grading will comply with the provisions of the backfilling and grading requirements of 405 KAR 1:130 and will provide adequate safety and access for proposed water users.

(6) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

Section 2. Permanent impoundments shall be approved by the department, designed, constructed and maintained

in accordance with the provisions of KRS 151.250 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:230. Steep slope mining.

RELATES TO: KRS 350.445

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth additional requirements for strip mining on areas of steep slope.

Section 1. Permittees conducting strip mining operations on natural slopes that exceed twenty (20) degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the department after consideration of soils, climate, the method of operation, geology, and other regional characteristics, shall comply with all other applicable requirements of this chapter and in addition shall comply with the following requirements:

(1) Spoil, waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope.

(2) The highwall shall be completely covered with spoil and the disturbed area graded to comply with the provisions of 405 KAR 1:130 with regard to backfilling and grading. Land above the highwall shall not be disturbed unless the department finds that the disturbance will facilitate compliance with the requirements of this regulation.

(3) Material in excess of that required to meet the provisions of 405 KAR 1:130 shall be disposed of in accordance with the requirements of 405 KAR 1:140.

(4) Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill. Woody materials may be chipped and distributed through the backfill when approved by the department.

Section 2. The requirements of Section 1 do not apply where strip mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining

proceeds and leaves a plain or predominantly flat area; or where mining is governed by 405 KAR 1:240 as related to mountaintop removal.

Section 3. Small operators as defined and qualified pursuant to 405 KAR 1:030, who are otherwise exempted from certain requirements of this chapter, are not exempted from Section 1(1) of this regulation regarding the placement of materials on downslopes.

LOWELL E. BRANDENBURG, Commissioner

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:240. Mountaintop removal.

RELATES TO: KRS 350.450

PURSUANT TO: KRS 13.082, 350.028, 350.450

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth special requirements for strip mining by the method of mountaintop removal.

Section 1. Strip mining operations that remove entire coal seams running through the upper part of a mountain, ridge, or hill by removing all the overburden and creating a level plateau of gently rolling contour with no highwalls remaining are exempt from the requirements of 405 KAR 1:130 for achieving approximate original contour, if the following requirements are met:

(1) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the affected land.

(2) The alternative postmining land use criteria in 405 KAR 1:070 are met and the proposal is approved by the department.

(3) The requirements of all other applicable regulations of this chapter are met in addition to the special requirements of this regulation.

Section 2. Strip mining operations conducted pursuant to this regulation shall comply with the standards of this section.

(1) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam and its associated overburden, shall be retained to prevent slides and erosion.

(2) The final graded top plateau slopes on the mined area shall be less than 1v:5h (twenty (20) percent) so as to create a level plateau or gently rolling configuration and the outslope of the plateau shall not exceed 1v:2h (fifty (50) percent), except where engineering data substantiates and the department finds that a minimum static safety factor of 1.5 will be attained. The department may require higher static safety factors depending upon specific site conditions.

(3) The resulting level or gently rolling contour shall be graded to drain inward from the outslope except at specific points where it drains over the out slopes in protected stable channels.

(4) All highwalls, spoil piles, and depressions shall be eliminated except as provided in Sections 4 and 5 of 405 KAR 1:130 with regard to backfilling and grading.

(5) Damage to natural water courses below the area to be mined shall be prevented.

(6) Spoil shall be placed on the mountaintop bench as is necessary to achieve the postmining land use approved under 405 KAR 1:070. All excess spoil material not retained on the mountaintop shall be placed in accordance with the standards of 405 KAR 1:140.

Section 3. (1) All permits giving approval for mountaintop removal shall be reviewed not more than three (3) years from the date of issuance of the permit, unless the permittee affirmatively demonstrates and the department finds that all operations are proceeding in accordance with the terms of the permit, KRS Chapter 350 and the applicable regulations of this chapter.

(2) The terms of a permit for mountaintop removal may be modified by the department if it determines that more stringent measures are necessary to prevent or control slides and erosion, prevent damage to natural water courses, avoid water pollution, or to assure successful revegetation.

LOWELL E. BRANDENBURG, Commissioner
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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:250. Prime farmland.

RELATES TO: KRS 350.450

PURSUANT TO: KRS 13.082, 350.028, 350.450

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth special requirements for the strip mining of lands containing prime farmland.

Section 1. Applicability. (1) Permittees of strip mining operations conducted on prime farmland shall comply with all applicable requirements of this chapter in addition to the special requirements of this regulation. Prime farmlands are those lands defined in Section 2 of this regulation that have been used for the production of cultivated crops, including nurseries, orchards, and other specialty crops, and small grains for at least five (5) years out of the twenty (20) years preceding the date of the permit application.

(2) The requirements of this regulation are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this regulation regarding actions to be taken before a permit is issued. Permit renewals or revisions shall include only those areas that:

(a) Were in the original permit area approved prior to August 3, 1977; or

(b) Are contiguous and under KRS Chapter 350 and applicable regulations would have normally been considered as a revision of a previously approved permit.

Section 2. Definition. Prime farmland means those lands that meet the applicability requirements in Section 1 of this regulation and the specific technical criteria prescribed by the Secretary of the United States Department of Agriculture as published in the Federal Register on August 23, 1977. These criteria are included here for convenience. Terms used in this section are defined in U.S. Department of Agriculture publications: Soil Taxonomy, Agriculture Handbook 436; Soil Survey Manual, Agriculture Handbook 18; Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282; and Saline and Alkali Soils, Agriculture Handbook 60. To be considered prime farmland, soils must meet all of the criteria of this section.

(1) The soils have:

(a) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of forty (40) inches or in the root zone, if the root zone is less than forty (40) inches deep, to produce the commonly grown crops in seven (7) or more years out of ten (10); or

(b) Xeric or ustic moisture regimes in which the available water capacity is limited but the area has a developed irrigation water supply that is dependable and of adequate quality (a dependable water supply is one in which enough water is available for irrigation in eight (8) out of ten (10) years for the crops commonly grown); or

(c) Aridic or torric moisture regimes and the area has a developed irrigation-water supply that is dependable and of adequate quality.

(2) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes

are excluded). These are soils that at a depth of twenty (20) inches have a mean annual temperature higher than thirty-two (32) degrees Fahrenheit. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than forty-seven (47) degrees Fahrenheit; in soils that have no O horizon the mean summer temperature is higher than fifty-nine (59) degrees Fahrenheit.

(3) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of forty (40) inches or in the root zone if the root zone is less than forty (40) inches.

(4) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.

(5) The soils can be managed so that, in all horizons within a depth of forty (40) inches or in the root zone if the root zone is less than forty (40) inches deep, during part of each year the conductivity of saturation extract is less than (4) mmhos/cm and the exchangeable sodium percentage (ESP) is less than fifteen (15).

(6) The soils are not flooded frequently during the growing season (less often than once in two (2) years).

(7) The soils have a product of K (erodibility factor) X percent slope of less than 2.0 and a product of I (soil erodibility) X C (climate factor) not exceeding sixty (60).

(8) The soils have a permeability rate of at least 0.06 inch per hour in the upper twenty (20) inches and the mean annual soil temperature at a depth of twenty (20) inches is less than fifty-nine (59) degrees Fahrenheit; the permeability rate is not a limiting factor if the mean annual soil temperature is fifty-nine (59) degrees Fahrenheit or higher.

(9) Less than ten (10) percent of the surface layer (upper six (6) inches) in these soils consists of rock fragments coarser than three (3) inches.

Section 3. Identification of Prime Farmland. Prime farmland shall be identified on the basis of soil surveys submitted by the applicant. The department also may require data on irrigation, drainage, flood control, and subsurface water management. The requirement for submission of soil surveys may be waived by the department if the applicant can demonstrate according to the procedures in Section 4 of these regulations that no prime farmlands are involved. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey, which include the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual), and shall include:

(1) Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with Section 2 of this regulation.

(2) A map designating the exact location and extent of the prime farmland;

(3) A description of each soil mapping unit.

Section 4. Negative Determination of Prime Farmland. The land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations:

(1) Lands within the proposed permit boundaries have been used for the production of cultivated crops for less than five (5) years out of twenty (20) years preceding the date of the permit application.

(2) The slope of all land within the permit area is ten (10) percent or greater.

(3) Land within the permit area is not irrigated or naturally subirrigated, has no developed water supply that

is dependable and of adequate quality, and the average annual precipitation is fourteen (14) inches or less.

(4) Other factors exist, such as a very rocky surface, or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland.

(5) A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in Section 1 of this regulation is submitted to the department by a qualified person other than the applicant, and is approved by the department.

Section 5. Plan for Restoration of Prime Farmland. The applicant shall submit to the department a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the department in judging the technological capability of the applicant to restore prime farmlands. The plan shall include:

(1) A description of the original undisturbed soil profile, as determined from a soil survey, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops and are to be removed, stored, and replaced;

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with Section 7 of this regulation;

(3) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;

(4) If applicable, documentation such as agricultural school studies or other scientific data from comparable areas that supports the use of other suitable material, instead of the A, B, or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management; and

(5) Plans for seeding or cropping the final graded mine land and the conservation practices to control erosion and sedimentation during the first twelve (12) months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and

(6) Available agricultural school studies, company data, or other scientific data for comparable areas that demonstrate that the applicant using his proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

Section 6. Consultation with Secretary of Agriculture and Issuance of Permit. (1) The department may grant a permit which shall incorporate the plan submitted under Section 5 of this regulation if the department finds in writing that the applicant:

(a) Has the technological capability to restore the prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(b) Will achieve compliance with the standards of Section 7 of this regulation.

(2) Before any permit is issued for areas that include prime farmlands, the department shall consult with the Secretary of Agriculture. The Secretary of Agriculture will provide a review of the proposed method of soil

reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has assigned his responsibilities under this paragraph to the Administrator of the U.S. Soil Conservation Service and the U.S. Soil Conservation Service will carry out the consultation and review through their State Conservationist, located in each state.

Section 7. Special Requirements. For prime farmlands to be mined and reclaimed, the applicant shall meet the special requirements of this section.

(1) All soil horizons to be used in the reconstruction of the soil shall be removed before drilling, blasting, or mining to prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons result in erosion that may cause air or water pollution, the department shall specify methods of treatment to control erosion of exposed overburden. The permittee shall:

(a) Remove separately the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material before replacement;

(b) Remove separately the B horizon of the natural soil or a combination of B horizon and underlying C horizon or other suitable soil material that will create a reconstructed root zone of equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material; and

(c) Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or more favorable for plant growth than the B horizon, and that when replaced will create in the reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil.

(2) If stockpiling of soil horizons is allowed by the department in lieu of immediate replacement, the A horizon and B horizon must be stored separately from each other. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than thirty (30) days must meet the requirements of Section 4 of 405 KAR 1:100 with regard to storage of topsoil.

(3) Scarify the final graded land before the soil horizons are replaced.

(4) Replace the material from the B horizon, or other suitable material specified in subsection (1)(b) or subsection (1)(c) of this section in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.

(5) Replace the A horizon or other suitable soil materials, which will create a final soil having an equal or greater productive capacity than existed prior to mining, as the final surface soil layer to the thickness of the original soil as determined in subsection (1)(a) of this section in a manner that:

(a) Prevents excess compaction of both the surface layer and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper twenty (20) inches of the reconstructed soil profile; and

(b) Protects the surface layer from wind and water erosion before it is seeded or planted.

(6) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:010. Definitions.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation defines essential terms used in this chapter.

Section 1. Definitions. Unless otherwise specifically defined in this chapter or otherwise clearly indicated by their context, terms in this chapter shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by strip mining operations or by surface operations of underground coal mining.

(2) "Acid-producing" or "acid-forming materials" means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

(3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the area of land affected so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the department determines that they are in compliance with 405 KAR 3:190.

(4) "Area of land affected" means the area of land which has been or will be disturbed by excavation or upon which activities have been or will be conducted or facilities, equipment or materials have been or will be located in connection with surface operations of underground coal mining or upon which surface effects of underground coal mining have occurred or will occur.

(5) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

(6) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes laterally into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(7) "Bench" means a ledge, shelf or terrace formed in the contour method of strip mining or formed in surface operations of underground coal mining.

(8) "Bureau" means the Bureau of Surface Mining Reclamation and Enforcement, Department for Natural Resources and Environmental Protection.

(9) "Coal" means combustible, carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by American Society for Testing and Materials (ASTM) designation 0-388-66.

(10) "Combustible material" means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

(11) "Commissioner" means the Commissioner of the Bureau of Surface Mining Reclamation and Enforcement of the Department for Natural Resources and Environmental Protection.

(12) "Compaction" means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

(13) "Department" means the Department for Natural Resources and Environmental Protection.

(14) "Disturbed area" means those lands that have been affected by strip mining and reclamation operations, or by surface operations of underground coal mining.

(15) "Diversion" means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.

(16) "Downslope" means the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall.

(17) "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(18) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(19) "Fill bench" means that portion of the bench which is formed by depositing overburden beyond the cut section.

(20) "Final grade" means the finished elevation of any surface disturbance prior to replacement of topsoil.

(21) "Ground water" means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

(22) "Gully erosion" means the erosion process whereby water accumulates in narrow channels over short periods and removes the soil from this narrow area to depths greater than one (1) foot.

(23) "Highwall" means the face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.

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

(25) "Hydrologic regime" or "hydrologic system" means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves

thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(26) "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of P.L. 95-87 in the surface operations of underground coal mining and reclamation operations, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

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

(28) "Intermittent or perennial stream" means a watercourse or part of a watercourse that flows continuously during all (perennial) or for at least one (1) month (intermittent) of the calendar year as a result of ground water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one (1) month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

(29) "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

(30) "Method of operation" means all aspects of the manner in which surface operations of underground coal mining are carried out.

(31) "Noxious plants" means species that have been included on official state lists of noxious plants for the State of Kentucky.

(32) "Operations" means all of the activities, premises, facilities, areas and equipment used to facilitate the process of producing coal from an underground coal mine, to facilitate the removing of overburden for the purpose of determining the location, quality or quantity of a natural coal deposit, or to facilitate the cleaning, preparation or other processing of coal.

(33) "Operator" means any person engaged in surface operations of underground coal mining who removes or intends to remove more than 250 tons of coal from the earth by underground mining within twelve (12) successive calendar months or who removes overburden for the purpose of determining the location, quality or quantity of a natural coal deposit.

(34) "Outslope" means the exposed area sloping away from a bench or terrace being constructed as a part of strip mining, surface operations of underground coal mining, and/or reclamation operations.

(35) "Overburden" means all of the earth and other materials which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of strip mining.

(36) "Permit" means the written document issued by the department to the permittee pursuant to this chapter.

(37) "Permittee" means any person holding a valid permit to conduct surface operations of underground coal mining and reclamation operations issued by the department pursuant to this chapter.

(38) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization.

(39) "Productivity" means the vegetative yield produced by a unit area for a unit of time.

(40) "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(41) "Reclamation" means the reconditioning of the area affected by strip mining or surface operations of underground coal mining.

(42) "Recurrence interval" means the precipitation event expected to occur, on the average, once in a specified interval. For example, the ten (10) year, twenty-four (24) hour precipitation event would be that twenty-four (24) hour precipitation event expected to be exceeded on the average once in ten (10) years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U. S.," May, 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

(43) "Rill erosion" means an erosion process in which numerous small channels only several inches deep are formed.

(44) "Roads" mean access and haul roads constructed, used, reconstructed, improved, or maintained for use in strip mining and reclamation operations or surface operations of underground coal mining, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within forty-five (45) days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all federal, state, county, or local roads are excluded from the definition.

(45) "Runoff" means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

(46) "Safety factor" means the ratio of the available shear strength to developed shear stress on a potential surface of sliding determined by accepted engineering practice.

(47) "Secretary" means the Secretary of the Department for Natural Resources and Environmental Protection.

(48) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(49) "Sedimentation ponds" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

(50) "Sheet erosion" means an erosion process whereby a uniform layer of soil is removed from the land surface by runoff water.

(51) "Significant, imminent environmental harm to land, air or water resources" is determined as follows:

(a) An environmental harm is an adverse impact on land, air or water resources, including but not limited to plant and animal life.

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

1. Is causing such harm; or
2. May be reasonably expected to cause such harm at any time before the end of the reasonable abatement time that would be set under section 521(a)(3) of P.L. 95-87.

(c) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(52) "Slope" means average inclination of a surface, measured from the horizontal, normally expressed as a unit of vertical distance to a given number of units of

horizontal distance (e.g. 1v to 5h = 20 percent = 11.3 degrees).

(53) "Soil horizons" means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:

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

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

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

(54) "Spoil" means overburden that has been removed during strip mining.

(55) "Stabilize" means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

(56) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a land owner for his own noncommercial use from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under regulations established by the department nor shall it include the surface effects or surface impacts of underground coal mining.

(57) "Subirrigation" means irrigation of plants with water delivered to the roots from underneath.

(58) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

(59) "Surface coal mining operations" means:

(a) Activities conducted on the surface of lands in connection with a strip mine or in connection with surface operations and surface effects of an underground coal mine. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16⅔) percent of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration subject to Section 512 of P.L. 95-87; and

(b) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas

shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage and excavation, working, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(60) "Surface effects of underground coal mining" means "surface operations of underground coal mining" and the topographical, geological, hydrological, physical, chemical, and biological impacts upon the land, water and air and upon plants, animals and other organisms.

(61) "Surface operations of underground coal mining" means activities and associated facilities, equipment, materials and premises on or above the surface of the earth used in connection with or incident to an underground coal mine, and shall include but not be limited to:

(a) Areas of land upon which such activities, facilities, equipment or materials are located or disturb the natural land surfaces;

(b) Adjacent areas of land where use of such adjacent areas is incidental to such activities, facilities, equipment, or materials;

(c) Areas of land disturbed or affected by the construction of new roads or the improvement or use of existing roads for haulage or excavation or for access to the site of such activities, facilities, equipment, or materials;

(d) Activities, facilities, equipment, materials, and premises for or incidental to the washing, cleaning, concentrating, crushing, preparation, or other processing of coal not involving a change in the chemical composition thereof;

(e) Excavation, haulage, workings, entryways, ventilation shafts, repair areas, storage areas, loading areas, and shipping areas;

(f) Disposal areas for coal waste and preparation plant waste, including solid refuse piles, slurry ponds, dams and impoundments which contain coal waste materials, dumps, culm banks, and tailings;

(g) Disposal areas for rock and earth materials, including spoil piles, overburden piles, and valley and head-of-hollow fills;

(h) Holes, depressions, sedimentation ponds or other impoundments; and

(i) Other areas upon which are situated facilities, equipment, materials, or other property incidental to or resulting from such activities, facilities, equipment or materials.

(62) "Surface water" means water, either flowing or standing, on the surface of the earth.

(63) "Suspended solids" means organic or inorganic materials carried or held in suspension in water and that will remain on a 0.45 micron filter.

(64) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or micro-biological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(65) "Toxic-mine drainage" means water that is discharged from active or abandoned mines and other areas affected by mining operations and which contains a substance which through chemical action or physical ef-

fects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(66) "Valley fill and head-of-hollow fill" means a structure consisting of any material other than waste placed so as to encroach upon or obstruct to any extent any natural watercourse other than those minor watercourses located on highland areas where overland flow in natural rills and gullies is the predominant form of runoff. Such fills are normally constructed in the uppermost portion of a V-shaped valley in order to reduce the upstream drainage area (head-of-hollow fills). Fills located farther downstream (valley fills) must have larger diversion structures to minimize infiltration. Both fills are characterized by rock underdrains and are constructed in compacted lifts from the toe to the upper surface in a manner to promote stability.

(67) "Waste" means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, washed or otherwise separated from product coal and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

(68) "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:020. General provisions.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth general provisions which apply in this chapter with regard to applicability, compatibility, conflicting provisions, severability, obligations of operators, and reporting requirements.

Section 1. Applicability. The regulations in this chapter shall apply to all surface operations for the underground mining of coal and all surface effects of underground coal mining conducted on or after May 3, 1978, and to any

other lands used, disturbed, or redisturbed in connection with or to facilitate the underground mining of coal except:

- (1) The extraction of coal by a land owner for his own noncommercial use from land owned or leased by him;
- (2) The extraction of coal as in incidental part of highway or other construction financed by federal, state or local governments;
- (3) The extraction of coal in any operation or activity in which are extracted 250 tons or less of coal within a period of twelve (12) consecutive calendar months; and
- (4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16⅔) percent of the total mineral tonnage extracted for commercial use or sales.

Section 2. Compatibility with P.L. 95-87. The provisions of this chapter are to be construed as compatible with federal regulations adopted pursuant to P.L. 95-87, the "Surface Mining Control and Reclamation Act of 1977," and the department may amend the regulations of this chapter to achieve conformity and compatibility with such federal regulations.

Section 3. Conflicting Provisions. The provisions of this chapter are to be construed as being compatible with and complimentary to each other. In the event that provisions within this chapter are found to be contradictory, the more stringent provisions shall apply.

Section 4. Severability. In the event that any provision or regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 5. Obligations of Operators. (1) General obligations:

(a) No person or operator shall engage in surface operations of underground coal mining without having obtained from the department a valid permit covering the area of land to be affected, except that underground mining operations existing on or before May 3, 1978, shall by August 3, 1978, make application to the department for a permit pursuant to the provisions of 405 KAR 3:050.

(b) A person or operator engaged in surface operations of underground coal mining shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to KRS 350.151, nor place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to KRS 350.151.

(c) A person or operator engaged in surface operations of underground coal mining shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(d) A person or operator engaged in surface operations of underground coal mining shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(e) On or after May 3, 1978, any person or operator engaged in surface operations of underground coal mining shall comply with the requirements of this chapter, except when compliance with the requirements of this chapter would preclude compliance with the requirements of Public Law 95-87, August 3, 1977, the "Surface Mining Control and Reclamation Act of 1977," and regulations adopted pursuant thereto.

(f) Upon development of any emergency conditions which threaten the life, health or property of the public, the operator shall immediately notify the persons whose life, health or property are so threatened, shall take any and all reasonable actions to eliminate the conditions creating the emergency, and shall provide notice of the emergency conditions to the department and to local law enforcement officials and appropriate local government officials. Any emergency action taken by an operator pursuant to this paragraph shall not relieve the operator of other obligations under this chapter or of obligations under other applicable local, state or federal laws and regulations.

(g) Compliance with the requirements of this chapter does not relieve any person or operator of responsibility for compliance with other applicable regulations of the department.

(2) Pre-existing structures and facilities:

(a) Any pre-existing, non-conforming structure or facility which is used in connection with or to facilitate the surface operations of underground coal mining on or after May 3, 1978, shall, by not later than November 4, 1978, be removed and the area reclaimed in accordance with the requirements of this chapter, or shall, by not later than November 4, 1978, be reconstructed to comply with the requirements of this chapter. Reconstruction shall begin by May 3, 1978, except that reconstruction of sedimentation ponds shall begin by June 3, 1978.

(b) Structures or facilities reconstructed pursuant to paragraph (a) of this subsection shall be reconstructed according to engineering plans prepared under the direction of a registered professional engineer, who shall be responsible for engineering supervision during reconstruction, and who upon completion of reconstruction shall certify to the department within fourteen (14) days thereafter, in a manner prescribed by the department, that the reconstruction was performed in accordance with accepted engineering practices and in accordance with his design plans and that the structure or facility as reconstructed is in compliance with the requirements of this chapter.

(c) Before beginning any reconstruction pursuant to paragraph (b) of this subsection the registered professional engineer responsible for design and reconstruction shall by June 3, 1978, provide the department with two (2) copies of the plans bearing his professional seal and signature, and shall certify to the department that, in his professional judgment, the structure or facility as reconstructed would comply with the requirements of this chapter.

(d) In the case of sedimentation ponds or other impoundments proposed for reconstruction pursuant to paragraphs (b) and (c), the responsible engineer shall determine the structure hazard classification of the proposed reconstructed structure according to the classification descriptions in paragraph (e). For structures classified (B) - moderate hazard or (C) - high hazard, the operator shall obtain a permit from the department, Division of Water Resources, pursuant to KRS 151.250 and regulations adopted pursuant thereto, prior to reconstruction.

(e) Structure hazard classifications are as follows:

1. The following broad classes of structures are

established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

a. Class (A); low hazard: Structures located such that failure would cause loss of the structure itself but little or no additional damage to other property. Such structures will generally be located in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads.

b. Class (B); moderate hazard: Structures located such that failure may cause significant damage to property and project operation, but loss of human life is not envisioned. Such structures will generally be located in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruption of use or service of relatively important public utilities.

c. Class (C); high hazard: This classification must be applied for structures located such that failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads. This classification must be used if failure would cause probable loss of human life.

2. The responsible engineer shall determine the classification of the structure after considering the characteristics of the valley below the site and probable future development. Establishment of minimum criteria does not preclude provisions for greater safety when deemed necessary in the judgment of the engineer. Considerations other than those mentioned in the above classifications may require that the established minimum criteria be exceeded. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the drawings.

3. When structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the possibility of a multiple failure must be considered in assigning the structure classification of the upstream structure.

(f) In the event that the date of November 4, 1978, for final compliance on pre-existing, non-conforming structures or facilities is extended by the U. S. Department of Interior, Office of Surface Mining Reclamation and Enforcement, such extended final compliance date shall automatically apply with regard to this section.

Section 6. Reporting Requirements. (1) Annual report of mining and reclamation. Any operator or person holding a valid permit for surface operations of underground coal mining pursuant to KRS 350.151 and this chapter shall submit, in a form and manner prescribed by the department, a report of all surface operations and reclamation operations conducted pursuant to the permit in the preceding twelve (12) month period. Such report shall be submitted not later than thirty (30) days after the end of each anniversary date of the permit. However, when the operator requests renewal of the permit pursuant to Section 8 of 405 KAR 3:050, and such information as is required in this subsection has been provided in the request for renewal, the requirement for such report for the preceding twelve (12) month period shall be deemed satisfied. Such report shall contain, but shall not be limited to the following information:

- (a) The identification of the operation;
- (b) Such maps as may be required by the department;
- (c) The area of land disturbed, backfilled and regraded;
- (d) The area of land planted or seeded;
- (e) The type of planting or seeding, including mixtures

and rates of application of plants, seed, lime, fertilizers, inoculants and other agents;

(f) The dates of planting or seeding;

(g) The condition of all sediment ponds, impoundments, disposal areas for excess rock and earth materials, and disposal areas for waste materials;

(h) Such additional information as the department may require;

(i) Such reports shall be certified by the operator as to accuracy.

(2) Mine map. Any operator or person conducting surface operations of underground coal mining and reclamation operations on and after May 3, 1978, shall submit to the department before July 3, 1978, an accurate map of the mine and permit area at a scale between 1:6000 and 1:200. The map shall show as of May 3, 1978, the lands, facilities and structures which have been used or disturbed to facilitate surface operations of underground coal mining.

(3) Other reports required. The operator shall submit such other reports, documentation, certifications, or other information as the department may require, or as may be required by KRS Chapter 350 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:030. Small operator exemption.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth conditions for the exemption of qualified small operators from certain provisions of this chapter.

Section 1. Applicability. If a person or operator is eligible under Section 2 of this regulation, and intends to engage in surface operations of underground coal mining on or after May 3, 1978, the department may certify the person or operator as qualified to receive a limited exemption from the provisions of this chapter. The exemption:

(1) Shall not relieve the person or operator of his obligations under the terms of any permits issued by the department under which he is operating or other obligations im-

posed upon him by applicable laws and regulations;

(2) Shall not relieve the person or operator of the obligation to apply for a permit by August 3, 1978 as required by 405 KAR 3:020, Section 5(1)(a);

(3) Shall not relieve the person or operator of his obligations imposed by 405 KAR 3:020, Section 5(1)(b), (c), (d), and (f), regarding operations which endanger the health and safety of the public or the environment;

(4) Shall not include the provisions of 405 KAR 3:100, Section 7, regarding the placement of spoil or other material on downslopes in steep slope areas; and

(5) Shall exempt the permittee from the requirement of regulations 405 KAR 3:070 through 405 KAR 3:190 of this chapter except as provided in subsection (4).

Section 2. Eligibility. A person or operator is eligible for an exemption under this regulation if:

(1) The actual and attributed production of that person or operator is estimated by the department and the Director of the Office of Surface Mining of the U.S. Department of Interior not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and

(2) If that person or operator:

(a) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that person or operator was 100,000 tons of coal or less from strip and underground coal mining operations; or

(b) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all strip and underground coal mining operations of that person or operator in the average calendar month was an amount of coal which when multiplied by twelve (12) yields a product of 100,000 tons or less;

(c) And, in the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.

Section 3. Applications. Applications for an exemption under this section shall be submitted to the Director of the Office of Surface Mining of the U. S. Department of Interior and to the Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Frankfort, Kentucky 40601, by March 1, 1978, or such other date as established by the Office of Surface Mining.

Section 4. Request. The request for exemption shall be in the form of an affidavit and shall include:

(1) The name and address of the person or operator and of persons who control him by reason of stock ownership or otherwise.

(2) The name, location, Mine Safety and Health Administration identification numbers, and Kentucky Department of Mines and Minerals license numbers of the underground coal mining operations for which exemption is sought, including a statement of the dates each license was issued or renewed and will expire.

(3) The date and method of creation and business organization arrangement if the person or operator is not an individual.

(4) A listing of all strip and underground coal mining operations showing:

(a) Actual production for the year ending July 31, 1977, attributed to the person or operator and the inclusive dates of operation.

(b) Estimated production for the year ending December 31, 1978, attributed to the person or operator and the an-

ticipated dates of operation.

(5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the person or operator has published in a local newspaper of general circulation in the area of each mine for which an exemption is sought once a week for two (2) weeks stating:

(a) That an application for a small operator exemption will be filed, which if granted would exempt the person or operator from certain environmental protection performance standards in P.L. 95-87 and KRS Chapter 350;

(b) The name and address of the person or operator;

(c) The location of the surface operations of underground coal mining to which the exemption will apply; and

(d) That public comments may be submitted to the Director, Office of Surface Mining Reclamation and Enforcement.

(7) Production from the following operations shall be attributed to the person or operator:

(a) All coal produced by operations beneficially owned entirely by the person or operator, or controlled by reasons of ownership, direction of the management, or in any other manner by the person or operator;

(b) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the person or operator owns more than a five (5) percent interest;

(c) All coal produced by persons who own more than five (5) percent of the person or operator or who directly or indirectly control the person or operator by reason of stock ownership, direction of the management or in any other manner.

(d) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the person or operator.

Section 5. (1) The department shall certify the applicant as qualified for the exemption if, based upon comments from the Office of Surface Mining or the public, or any other information, it finds that:

(a) The person or operator has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(b) The exemption will not be inconsistent with state or federal law, regulation or permit terms.

(2) Any person aggrieved by the decision of the department under this section may appeal within thirty (30) days from receipt of that decision to Franklin Circuit Court pursuant to KRS 350.032(2).

(3) The exemption shall be effective on the date approved. It shall remain in effect until December 31, 1978, or until revoked, whichever is earlier.

(4) The department shall revoke the qualification for the exemption upon finding that the qualification was erroneously issued or that the exempted operation has or will produce more than 100,000 tons of coal per year.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:040. Operations affecting two acres or less.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for surface operations of underground coal mining which affect two acres or less.

Section 1. Definitions. The definitions of terms as stated in 405 KAR 3:040 shall apply with respect to this regulation except as otherwise specifically stated in this regulation or except as otherwise clearly indicated by the context of use of such terms in this regulation.

Section 2. General Provisions. (1) Applicability:

(a) This regulation shall apply to surface operations of underground coal mining which would affect two (2) acres or less, including surface excavations, disposal areas, access and haul roads, and other surface operations and facilities directly associated with the mining operation which are located contiguous to or in the immediate vicinity of the mining operation.

(b) This regulation shall not apply when complete feasible recovery of the coal resource at the proposed location would require operations which would affect more than two (2) acres, and the department reasonably expects that other proposals to conduct surface operations of underground coal mining in the immediate vicinity will be forthcoming in order to complete the feasible recovery of the coal resource.

(c) No permit will be issued pursuant to this regulation to conduct surface operations of underground coal mining within 200 feet of another operation for which a permit has been issued pursuant to this regulation.

(d) The provisions of this regulation shall apply only to surface operations for underground coal mining for which permits are issued on or after May 3, 1978.

(2) General Obligations. The obligations imposed upon all operators by 405 KAR 3:020, Section 5(1)(a), (b), (c), (d), (f), and (g), and the reporting requirements of 405 KAR 3:020, Section 6(1) and (3), shall apply with respect to this regulation.

Section 3. Permit Requirements. (1) The provisions of 405 KAR 3:050 shall apply with respect to this regulation, except as otherwise provided in this section.

(2) Those provisions of 405 KAR 3:050 which are listed in this subsection shall not apply with respect to this regulation.

(a) 405 KAR 3:050, Section 4(10)(b), with regard to water quality standards and surface water monitoring; and

(b) 405 KAR 3:050, Section 4(11), with regard to ground water.

Section 4. Environmental Protection Performance Standards. (1) The environmental protection performance standards set forth in this chapter in regulations 405 KAR 3:070 to 405 KAR 3:190, inclusive, shall apply with respect to this regulation except as provided in this section.

(2) Those provisions of 405 KAR 3:070 to 405 KAR

3:190, inclusive, which are listed in this subsection, shall not apply with respect to this regulation except as herein provided.

(a) Water quality standards and surface water monitoring:

1. The provisions of 405 KAR 3:140 shall not apply with respect to this regulation.

2. The department may require that the permittee monitor the quality of water discharges from the permit area in a manner prescribed by the department and submit to this department such monitoring reports as the department may require. The parameters to be monitored may include total iron, total manganese, total suspended solids, and pH.

(b) Ground water. The provisions of 405 KAR 3:150 shall not apply with respect to this regulation.

(c) Sediment control measures. The provisions of 405 KAR 3:170, Section 1(2), requiring sedimentation ponds shall not apply with respect to this regulation, except that the department may require the construction of sedimentation ponds when necessary to prevent excessive contribution of suspended solids to surface runoff from the permit area. Criteria required for design and construction of sedimentation ponds pursuant to this paragraph shall not be more stringent than criteria provided in 405 KAR 3:170.

Section 5. (1) Variances. The department may at its discretion waive any provision of this chapter with respect to this regulation, except the provisions of 405 KAR 3:020, Section 5(1)(a), (b), (c), (d), (f), and (g); 405 KAR 3:020, Section 1; and 405 KAR 3:060; upon a written finding by the department that the public and the environment will in the absence of such provisions be provided adequate protection consistent with the purpose of this chapter.

(2) In any permit issued pursuant to this regulation, the department shall not impose requirements more stringent than provided in this regulation.

Section 6. Inspection and Enforcement Procedures. The provisions of 405 KAR 3:060 shall apply with respect to this regulation.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

**DEPARTMENT FOR NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:050. Permit requirements.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth procedures and requirements related to permits.

Section 1. Permit Required. (1) No person shall engage in surface operations of underground coal mining without having first obtained a permit from the department.

(2) The permit shall authorize the permittee to engage in surface operations of underground coal mining upon the area described in his application for a period of five (5) years from the date of issuance.

(3) The permit shall authorize surface operations of underground coal mining during a time period for which the permittee has posted appropriate bond coverage.

(4) The permit shall confer upon the permittee a qualified right to conduct surface operations of underground coal mining, but shall not relieve the permittee of responsibility to comply with all applicable federal, state and local laws and regulations.

Section 2. Preliminary Requirements. A person desiring a permit shall submit to the department a preliminary application of the form and content prescribed by the department. The preliminary application shall contain pertinent information including, but not limited to, a U. S. Geological Survey 7½ minute topographic map marked to show the approximate boundaries of the area of land to be affected or locations of mine openings, access roads, haul roads, disposal areas for excess earth and rock materials, waste disposal areas, sedimentation ponds, other processing areas, stockpile areas, loading areas, facilities for the washing or other preparation of coal. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the department. Personnel of the department shall conduct an on-site investigation of the area with the person or his representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 3. Publication of Notice of Intention to Mine.

(1) A prospective applicant for a permit shall publish at least once a public notice of his intention to file an application for that permit. Such publication shall be made by advertisement in a newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed mining site is located.

(2) The publication shall be made within thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled "Notice of Intention to Mine" and shall be in a manner and form prescribed by the department and shall include, though not be limited to, the following:

- (a) The name and address of the applicant;
- (b) The permit application number;

- (c) The location of the proposed mining site;
- (d) A brief description of the mining activity proposed, together with a statement of the amount of acreage to be affected by the proposed surface operations.
- (4) The applicant for a permit shall establish the date and place at which the "Notice of Intention to Mine" was published by attaching to his application an affidavit from the publishing newspaper certifying the time, place and content of the published notice.

Section 4. Permit Application. (1) A person desiring a permit shall submit an application of form and content as prescribed by the department. The application shall be on forms provided by the department, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the department, with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the department may require.

(2) The application shall include, but not be limited to, the information described in subsections (2) through (13) of this section.

(a) The location and area of land to be affected by the operation, with a description of access to the site from the nearest public highway;

(b) The owner or owners of the surface of the area of land to be affected by the proposed operations and the owner or owners of all surface area within 500 feet or any part of the area to be affected;

(c) The owner or owners of the coal to be mined;

(d) The source of the applicant's legal right to mine coal on the land to be affected;

(e) The principal and local post-office addresses of the applicant;

(f) Whether or not the applicant or any person associated with the applicant as specified in subsection (2)(g) holds or has held any other permits under KRS Chapter 350, and an identification of such permits;

(g) Whether or not the applicant is in compliance with KRS 350.130(3) regarding past suspensions or revocations of permits, forfeitures of bond, or repeated non-compliance or violation, and whether or not every officer, partner, director or any individual owning of record or beneficially (alone or with associates) if known, ten (10) percent or more of any class of stock of the applicant, is subject to any of the provisions of KRS 350.130(3) and he shall so certify;

(h) A copy of the applicant's published notice of intention to mine and an affidavit from the publisher, pursuant to Section 3 of this regulation.

(3) **Maps.** The application shall include or be accompanied by five (5) copies of a United States Geological Survey 7½ minute topographic map or other such map acceptable to the department on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.

(4) **Enlarged maps.** The application shall include or be accompanied by five (5) copies of an enlarged United States Geological Survey 7½ minute topographic map or other such map acceptable to the department meeting the requirements of paragraphs (a) through (h) of this subsection. The map shall:

(a) Be prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. The certification shall read as follows: "I, the undersigned,

hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the applicable mining laws of this state." The certification shall be signed and notarized. The department may reject any map as incomplete if its accuracy is not so attested.

(b) Identify the area of land to be affected to correspond with the application.

(c) Show adjacent underground mining and the boundaries of surface properties and names of owners on the area to be affected and within 500 feet of any part of the area to be affected.

(d) Be of a scale between 400 feet to the inch and 600 feet to the inch.

(e) Show the names and locations of all streams or other bodies of public water; wild rivers as established pursuant to KRS Chapter 146; local, state, interstate, national or other public parks; roads, schools, communities, public buildings or other public property; churches or cemeteries; commercial or institutional buildings; oil and gas wells, oil and gas lines, water and sewer lines, power and telephone lines; and dwelling houses or other residences, within 500 feet of the area of land to be affected.

(f) Show by appropriate markings the boundaries of the area of land to be affected, the total number of acres of land to be affected, and the proposed locations of roads, entries to underground works, excavations, disposal areas for rock and earth materials, disposal areas for waste materials including refuse piles and slurry ponds, sedimentation ponds, other impoundments, topsoil storage areas, stockpiles, areas and facilities for washing, crushing or other processing of coal, loading and shipping areas, repair areas, storage areas for equipment and materials, and other significant facilities incident to surface operations of underground coal mining.

(g) Show the date on which the map was prepared, the north point and the quadrangle name.

(h) Show the drainage plan on and away from the area of land to be affected. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(5) Transportation plan. The application shall include or be accompanied by a transportation plan and map of such scale and detail as the individual county maps published by the Kentucky Department of Transportation which shall set forth the portions of the county and state public road system, if any, over which the applicant proposes to transport and coal extracted in the underground mining operation.

(a) The plan shall specify the legal weight limits for each portion of any such road or bridge over which the applicant proposes to transport coal.

(b) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.

(c) The plan shall contain a certification by a duly authorized official of the Kentucky Department of Transportation attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.

(6) Topsoil handling plan. The application shall include or be accompanied by a plan for the handling of topsoil which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the re-

quirements of 405 KAR 3:080 with regard to topsoil handling.

(7) Backfilling and grading plan. The application shall include or be accompanied by a plan for backfilling and grading which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 3:100 with regard to backfilling and grading.

(8) Plan for disposal of excess rock and earth materials. The application shall include or be accompanied by a plan for the disposal of rock and earth materials. In excess of that required to meet the backfilling and grading requirements of 405 KAR 3:100 which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 3:110 with regard to disposal of excess rock and earth materials.

(9) Plan for handling of waste materials and acid-forming and toxic-forming materials. The application shall include a plan for the handling of acid-forming or toxic-forming materials, waste materials or other unstable materials which shall demonstrate to the satisfaction of the department that the operation will comply with the requirements of 405 KAR 3:120 with regard to waste materials and acid and toxic materials.

(10) Surface Water Control and Monitoring Plan. The application shall contain or be accompanied by a plan for the control and monitoring of surface water, which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of:

(a) 405 KAR 3:130 with regard to protection of the hydrologic system;

(b) 405 KAR 3:140 with regard to water quality standards and surface water monitoring;

(c) 405 KAR 3:170 with regard to sediment control measures; and

(d) 405 KAR 3:160 with regard to diversions of surface flows.

(11) Ground water control and monitoring plan. The application shall include or be accompanied by a plan for the control and monitoring of ground water, which shall demonstrate to the satisfaction of the department that the operation will comply with the requirements of:

(a) 405 KAR 3:130 with regard to protection of the hydrologic system;

(b) 405 KAR 3:150 with regard to ground water; and

(c) 405 KAR 3:160 with regard to diversion of underground flows.

(12) Revegetation plan. The application shall include or be accompanied by a revegetation plan which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 3:080 with regard to revegetation.

(13) In the required operational plans specified in subsections (5) through (12) of this section and in the other requirements of this section, the department may require all such supporting documentation as the department may deem necessary to insure that the provisions of this chapter will be met. Such documentation may include but not be limited to detailed engineering drawings, engineering calculations, and documentation prepared by qualified persons in other appropriate technical fields or sciences.

(14) Fees. The application shall be accompanied by a cashier's check or money order payable to the Kentucky State Treasurer in the amount of \$250 plus fifty dollars (\$50) for each acre or fraction thereof of the area of land to be affected by surface operations. No permit application shall be processed unless such fees have been paid.

(15) Bonds:

(a) The application shall file with the department a bond payable to the Commonwealth of Kentucky, with surety satisfactory to the department, in the penal sum to be determined by the department on the recommendation of the secretary, of not less than \$500 nor more than \$3,000 for each acre or fraction thereof of the area of land to be affected, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in KRS Chapter 350 and of the rules and regulations promulgated pursuant thereto in this chapter. The department shall accept, in lieu of the surety provided herein, the deposit by the applicant of United States government securities, cash, or its equivalent in a sum equal to the principal amount of the required bond.

(b) In determining the amount of bond within the limits in paragraph (a) of this subsection, the department shall take into consideration the character and nature of the overburden and the cost of backfilling, grading, and reclamation to be required as provided in this chapter.

(c) In a particular instance where the circumstances are such as to warrant an exception, the department may in its discretion reduce the amount of the bond for a particular operation to less than the minimum required in paragraph (a) of this subsection.

Section 5. Procedures for Processing of Application.

(1) Five (5) complete, but separate and distinct copies of the application shall be submitted to the department at the location and address prescribed by the department. The department shall provide written acknowledgement of receipt of the application.

(2) Within thirty (30) working days the department shall either:

(a) Issue a permit to the applicant or deny the application; or

(b) Notify the applicant in writing of any proposed modifications to the application and allow the application to be temporarily withdrawn, and the temporary withdrawal period shall not be considered in computation of the thirty (30) working days.

(3) If the department denies an application it shall set forth in writing the reasons for the denial.

(4) Hearings:

(a) An applicant aggrieved by the actions of the department pursuant to subsection (3) may by written notice request that a hearing be conducted by the department. The right to demand such 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 such notice. The department shall schedule a hearing before the department not more than twenty-one (21) days after notice of demand for such a hearing. 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 regulations involved; and a short statement of the reason for the granting of the hearing.

(b) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a pre-hearing 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 pre-hearing conference by stipulation, agreed settlement, consent order or default.

(c) 1. Any party to a hearing may be represented by counsel, may make an oral or written argument, offer

testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing, shall keep order, and shall conduct 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 of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officer 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. Notice may be taken of generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the materials so noticed. The department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

3. It will be within the hearing officer's discretion to require official transcripts or to set up other procedures for taking evidence. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matter 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 payment of the actual cost of reproducing the original except as provided in KRS 224.035.

(d) 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 order shall contain the appropriate findings of fact and the 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 seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary shall consider the report and recommended order and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer as the department's or issue his own written order based on the report and recommended order. The secretary shall act within twenty (20) days of the deadline for filing exceptions, unless extensions of time have been granted to the hearing officer, pursuant to paragraph (e).

(e) After completion of the hearing and filing of exceptions, the department shall notify the applicant in writing, certified mail, returned receipt requested, of the final decision of the department. If any extension of time is granted by the secretary for a hearing officer to complete his report, the department shall notify all parties at the time of

the granting of the extension. Parties shall have seven (7) days to file exceptions to the report and recommended order if such an extension is granted.

(f) 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.

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

(h) There shall be no ex parte communications between a hearing officer and parties to the action.

(i) Any person aggrieved by a final order of the department may have recourse to the courts as set forth in KRS 224.085 and 350.032(2).

Section 6. Deletion of Areas and Denial of Permit. (1) The department shall delete from a permit areas proposed to be affected by surface operations of underground coal mining, or shall deny a permit when necessary to insure compliance with the provisions of this section.

(2) No application for a permit and no operation shall be approved or allowed by the department if there is found on the basis of the information set forth in the application, or based on other relevant information available to the department, that the requirements of KRS Chapter 350 and this chapter will not be observed, or that there is not probable cause to believe that the proposed surface operations, backfilling, grading or reclamation or the area to be affected can be carried out consistent with the purpose of KRS Chapter 350.

(3) If the department finds, based upon experience with similar operations upon lands of similar physical and chemical characteristics, that substantial deposition of sediment in stream beds, landslides or acid water pollution cannot feasibly be prevented, the department may delete from the application lands with such physical and chemical characteristics.

(4) Subject to valid existing rights no surface operations of underground coal mining except those which existed on or before August 4, 1977, shall be permitted to be within 300 feet from any occupied dwelling unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building or public park, or within 100 feet of a cemetery.

(5) The department shall not issue a permit if it finds that the operation will constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream lake or other public property. The department shall delete such areas from the permit application or operation.

(6) The department shall not give approval to conduct surface operations of underground coal mining upon any area which is within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line, provided however that the department may permit such public roads to be relocated, or may permit the area affected to lie within 100 feet of such public road, if after public notice and opportunity for public hearing in the locality a written finding is made by the department that the interests of the public and the land owner affected thereby will be protected.

(7) The department shall not approve the application for a permit where the surface operations of underground coal mining will adversely affect a wild river established pur-

suant to KRS Chapter 146, or a state, national or interstate park unless adequate screening and other measures as approved by the department are incorporated into the permit application.

(8) The department shall not issue a permit to conduct surface operations of underground coal mining upon an area unless it finds that adequate measures have been or will be undertaken to eliminate damages to members of the public, their real and personal property, public roads, streams, and all other public property, from soil erosion, rolling or sliding stones and earth materials, water pollution, and hazards dangerous to life and property.

(9) No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface operations of underground coal mining and reclamation operations unless the department specifically authorized operations through such a stream. The area not to be disturbed shall be designated a buffer zone and be marked as specified in 405 KAR 3:070 regarding signs and markers.

(10) Denial of permit for past violations:

(a) An operator or person whose mining permit or operation has been revoked, suspended, or terminated shall not be eligible to receive another permit or begin another operation, or be eligible to have suspended permits or operations reinstated, until he shall have complied with all the requirements of KRS Chapter 350 in respect to all permits issued him.

(b) No operator or person who has forfeited any bond shall be eligible to receive another permit or begin another operation unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator or person has paid such sum as the department finds is adequate to reclaim such lands.

(c) The department shall not issue any additional permits to, or allow future operations by, any operator or person who has repeatedly been in noncompliance with or violation of KRS Chapter 350, or who has had permits revoked or operations terminated on more than three (3) occasions.

Section 7. Increase or Decrease of Area Under Permit. Upon application by the permittee, the department may amend a valid existing permit so as to increase or decrease the permitted area of land to be affected by operations under that permit. Such applications for amendment may be filed at any time during the term of the permit.

(1) Increase of area under permit:

(a) Application. The permittee shall file an application in the same form and with the same content as required for an original application under Sections 2, 3, and 4 of this regulation.

(b) Fees. The permittee shall pay in the manner prescribed in Section 4(14) of this regulation, a basic fee of \$250 plus a fee of fifty dollars (\$50) for each acre or fraction of acre of increased area requested.

(c) The permittee shall file with the department a supplemental bond in the amount to be determined as provided in Section 4(18) of this regulation, for each acre or fraction of an acre of the increased area approved.

(d) The date of expiration of the amended permit shall be the same as the date of expiration of the permit prior to amendment.

(2) Decrease of area under permit:

(a) Application. The permittee shall file an application upon forms provided by the department, with such documentation as the department may require, showing the undisturbed area which is requested to be subtracted from the area of land covered by the existing valid permit.

(b) Release of bond. If the department approves the decrease in permitted area it shall release the bond for each acre of the decreased, but in no case shall the bond be reduced below \$5,000 except as provided in Section 4(18)(c) of this regulation.

(c) Acreage fees transferred. If the department approves the decrease in acreage under permit the fees for each acre decreased shall be returned to the permittee, or shall upon request of the permittee be transferred and credited to acreage fees in subsequent applications by the permittee.

Section 8. Renewal of Valid Existing Permit. (1) Any valid permit issued pursuant to KRS Chapter 350 shall carry with it the right of successive renewal upon expiration, with respect to areas within the boundaries of the existing permit. Any permit renewal shall for a term not to exceed the period of the original permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application which addresses any new land areas shall be subject to the full standards applicable to new applications pursuant to KRS Chapter 350, and a new and original application shall be required for such areas.

(3) Application for permit renewal shall be made not later than thirty (30) working days prior to the expiration of the existing valid permit. The holders of the permit may apply for renewal and such renewal shall be issued, and the public notice requirements of this chapter shall not apply, provided that the requirements of paragraphs (a) through (f) of this subsection are met.

(a) The application for renewal shall be submitted in the form, manner and content as prescribed by the department.

(b) The permittee shall submit, in the manner prescribed by the department, all revised or updated information required by the department. Such information shall include, but not be limited to, an updated operational plan current to the date of request for renewal, showing the status and extent of all surface operations and reclamation operations on the existing permit.

(c) The terms and conditions of the existing permit are being satisfactorily met.

(d) The present surface operations and reclamation operations are in compliance with the environmental protection standards of this chapter as set forth in 405 KAR 3:070 through 405 KAR 3:190.

(e) The operator shall provide evidence that the performance bond is in effect for the renewal requested, as well as any additional bond which the department might require.

(4) Prior to approval of any permit renewal the department shall provide notice to the appropriate public authorities.

Section 9. Succession of One Operator by Another. (1) Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease or otherwise, the department may release the first operator from all liability under this chapter for that particular operation provided the requirements of paragraphs (a) and (b) of this subsection are met:

(a) The successor operator shall have been issued a permit and shall have otherwise complied with the requirements of this chapter; and

(b) The successor operator shall assume as part of his

obligation under this chapter, all liability for the reclamation of land areas affected by the former operator.

(2) A successor in interest to a permittee who applies for a new permit within thirty (30) days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface operations and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

Section 10. Strip Mining Operations on Areas of Surface Operations of Underground Coal Mining. If approved by the department, a permittee may conduct strip mining operations on areas of land covered by a valid permit for surface operations of underground coal mining, provided that a permit is obtained from the department and such strip mining operations are conducted in accordance with procedures and environmental protection performance standards as contained in KRS Chapter 350 and regulations adopted pursuant thereto regarding strip mining operations.

(1) Application for approval. In applying to the department for such permit the applicant shall apply for a permit as required by KRS Chapter 350 and regulations adopted pursuant thereto for strip mining operations. The applicant shall also file a revised copy of the map of the area on which the valid permit for surface operations was based, on which he shall designate the proposed strip mining operations and other parts of the area necessary to the conduct of strip mining operations.

(2) Deferral of reclamation. Subject to compliance with the water quality standards of 405 KAR 3:140, and subject to the requirements of KRS Chapter 350 and regulations adopted pursuant thereto regarding strip mining operations, the department may authorize the permittee to defer the reclamation of the area disturbed by strip mining operations if necessary to the conduct of surface operations of underground coal mining.

(3) Bond to remain in effect. The bond covering such area shall remain in effect until reclamation of such area has been completed by the permittee as required by the provisions of KRS Chapter 350 and regulations adopted pursuant thereto.

Section 11. Release of Bond. (1) When the backfilling and grading have been completed for an area in a manner consistent with the requirements of this chapter, and the soil pH level as required by the department has been established, the permittee may submit to the department a report and request for partial release of bond for the area. The report shall state the number of acres and type of area affected for which the partial bond release is requested and shall contain appropriate maps, cross-sections, and other engineering and technical documentation as the department may require to demonstrate to the satisfaction of the department that the requirements of this chapter have been met with regard to backfilling and grading and that the required soil pH level has been established.

(2) Upon verification of the report and request, the department shall release to the permittee the bond which was posted for that area in its full amount less \$300 per acre.

(3) After the preparation, planting and mulching of a given area and after not less than two (2) growing seasons, the permittee may submit a report for release of the remaining bond of \$300 per acre. The report shall demonstrate to the satisfaction of the department that the requirements of this chapter have been met with regard to

revegetation, and that surface drainage from the area meets the water quality standards of this chapter prior to any treatment of the drainage.

(4) After verification of the request and report of vegetation and water quality, the department shall release to the permittee the remaining bond in the full amount of \$300 per acre.

(5) Transfer of liability. A person or organization, having qualifications acceptable to the department, may post bond or a cash deposit in a sum determined by the department and assume the liability for carrying out the reclamation plan approved by the department in areas where the mining operation and any necessary backfilling and grading have been completed. The department shall then release the bond posted by the permittee for such area.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

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PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:060. Inspection and enforcement procedures.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth procedures for inspection and enforcement.

Section 1. Inspection Procedures. The department shall make such inspections or investigations as it deems necessary to insure compliance with any provision of KRS Chapter 350 and regulations adopted pursuant thereto.

Section 2. Enforcement Procedures. (1) Determination of violations. The department shall determine whether violations of the provisions of KRS Chapter 350 and regulations adopted pursuant thereto have occurred.

(2) Notice of violations. If the department determines that such violations have occurred, the department shall by certified mail (return receipt requested) provide written notice to the operator that such violations have occurred and shall therein stipulate a reasonable time period for the feasible correction of such violations.

(3) Notice of noncompliance, order of suspension:

(a) If any of the requirements of KRS Chapter 350 or rules and regulations adopted pursuant thereto have not

been complied with within the time limits set by the department or by KRS Chapter 350 or regulations adopted pursuant thereto, the department shall cause a notice of noncompliance to be served upon the operator; or where found necessary, the secretary shall, after a hearing (except as provided in KRS 224.071), order the suspension of a permit or operation.

(b) Such notice or order shall be handed to the person in charge of the operation. Such notice or order shall also be handed to the operator in person, or shall be served upon the operator by certified mail (return receipt requested), or by registered mail, addressed to the permanent address shown on the permit application. If no address is shown on the application, then such notice or order shall be mailed to such other address as known to the department.

(c) The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with KRS Chapter 350 or the regulations or orders of the department.

(4) Revocation of permit; termination of operation; forfeiture of bond. If the operator has not reached an agreement with the department or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked or the operation terminated, after a hearing, by order of the department and the performance bond, if any, shall then be forfeited to the department.

Section 3. Penalties. Any person or operator who violates any of the provisions of KRS Chapter 350 or regulations adopted pursuant thereto, or who fails to perform the duties imposed by such provisions, or who violates any determination or order promulgated pursuant to the provisions of KRS Chapter 350, shall be subject to civil and criminal penalties as set forth in KRS 350.990.

Section 4. Hearing. (1) An operator or permittee aggrieved by the actions of the department pursuant to this regulation may by written notice request that a hearing be conducted by the department. The right to demand such 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 such notice. The department shall schedule a hearing before the department not less than twenty-one (21) days after notice of demand for such a hearing. 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 regulations involved; and a short statement of the reason for the granting of the hearing.

(2) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a pre-hearing 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 pre-hearing conference by stipulation, agreed settlement, consent order or default.

(3) (a) 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, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice.

(b) 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 of 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. Notice may be taken of generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(c) It will be within the hearing officer's discretion to require official transcripts or to set up other procedures for taking evidence. 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 payment of the actual cost of reproducing the original except as provided in KRS 224.035.

(d) 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 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 seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary shall consider the report and recommended order and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer and the department's or issue his own written order based on the report and recommended order. The secretary shall act within twenty (20) days of the deadline for filing exceptions, unless extensions of time have been granted to the hearing officer, pursuant to paragraph (e).

(e) After completion of the hearing and filing of exceptions, the department shall notify the applicant in writing, certified mail, return receipt requested, of the final decision of the department. If any extension of time is granted by the secretary for a hearing officer to complete his report, the department shall notify all parties at the time of the granting of the extension. Parties shall have seven (7) days to file exceptions to the report and recommended order if such an extension is granted.

(f) 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.

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

(h) There shall be no ex parte communications between a hearing officer and parties to the action.

(i) Any person aggrieved by a final order of the department may have recourse to the courts as set forth in KRS 224.085 and 350.032(2).

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:070. Signs and markers.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements relating to the postmining use of land.

Section 1. General. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. Signs and other markers shall be maintained by the permittee during all operations to which they pertain and shall be kept legible and visible and shall conform to all local ordinances and codes. The department may establish standards for construction of signs and markers as necessary to accomplish the purposes of this regulation.

Section 2. Mine and Permit Identification Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall clearly identify the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds. Failure to post such signs shall be grounds for revocation of the permit.

(2) Signs constructed pursuant to this section shall be constructed of wood or other durable material, with the

sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 3. Buffer Zone Markers. Land areas within 100 feet of perennial and intermittent streams shall not be disturbed unless specifically authorized by the department. Such areas to be undisturbed are to be designated as buffer zones and shall be marked along the interior boundary of the buffer zone in a manner consistent with perimeter markers.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

APPROVED: **EUGENE F. MOONEY**, Secretary
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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION **Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 3:080. Topsoil handling and revegetation.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements relating to revegetation or the handling of topsoil.

Section 1. Topsoil Handling. Topsoil shall be removed as a separate operation from areas to be disturbed by surface operations, such as roads and areas upon which support facilities are to be sited. Selected overburden materials may be used instead of, or as a substitute for topsoil where the resulting soil medium is determined by the department to be equal to or more suitable for revegetation. Topsoil shall be segregated, stockpiled, and protected from wind and water erosion, or contaminants. Disturbed areas no longer required for the conduct of mining operations shall be regraded, topsoil distributed, and revegetated.

Section 2. Revegetation. The permittee shall establish on all land that has been disturbed by mining operations a diverse, effective, and permanent vegetative cover capable of self-regeneration and plant succession, and adequate to control soil erosion. Introduced species may be substituted for native species if approved by the department. Introduced species shall meet applicable state and federal seed or in-

roduced species statutes, and may not include poisonous or potentially toxic species.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

APPROVED: **EUGENE F. MOONEY**, Secretary
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PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION **Bureau of Surface Mining Reclamation and Enforcement**

405 KAR 3:090. Access roads, haul roads, and other transport facilities.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for design, construction, maintenance and reclamation of access roads, haul roads and other transport facilities.

Section 1. General. (1) Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by state or federal law.

(2) The effluent limitations of 405 KAR 3:130 shall not apply to drainage from access and haul roads located outside the disturbed area, as defined in 405 KAR 3:130, unless otherwise specified by the department.

Section 2. Construction. All access and haul roads shall be constructed in accordance with the requirements of this section.

(1) Roads shall not be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding.

(2) All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion.

(3) Roads shall not be located in active stream channels.

(4) Stream fords are prohibited unless they are specifically approved by the department as temporary routes across dry streams that will not adversely affect sedimentation and will not be used for coal haulage.

(5) Other stream crossings shall be made using bridges, culverts, or other structures designed and constructed to

Section 3. The department may require other actions necessary to assure that the provisions of this regulation are met.

LOWELL E. BRANDENBURG, Commissioner

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:130. Protection of the hydrologic system.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for minimizing disturbances to the hydrologic system.

Section 1. General. The permittee shall plan and conduct surface operations of underground coal mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from underground coal mining operations, both on and off site.

(1) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized and applicable federal and state statutes and regulations are not violated.

(2) The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize surface operations of underground coal mining and reclamation practices which will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities prior to discharge to surface waters. Such practices include, but are not limited to, diverting water from underground workings of preventing water contact with acid or toxic-forming materials, and minimizing water contact time with waste materials, stabilizing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation. If pollution can be controlled only by treatment, necessary water treatment facilities shall be operated and maintained by the permittee for as long as treatment is required.

Section 2. Sealing of Surface Openings. (1) Vertical holes such as boreholes, shafts and wells, and approximately horizontal holes such as auger holes, shall be cased, sealed or otherwise managed to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality.

(2) All boreholes that are within the permit area but are outside the area of the surface coal mining area or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the department, unless the boreholes have been approved for use in monitoring.

Section 3. Water Rights and Replacement. The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface operations of underground coal mining by the permittee.

LOWELL E. BRANDENBURG, Commissioner

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:140. Water quality standards and surface water monitoring.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth water quality standards and requirements for surface water monitoring.

Section 1. Water Quality Standards. For purposes of this regulation disturbed areas shall include areas of surface operations but shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this regulation and the upstream area is not otherwise disturbed by the permittee. Disturbed areas shall not include those surface areas overlying underground workings unless those areas are

also disturbed by surface operations such as fill (disposal) areas, support facilities areas, or other major activities which create a risk of pollution.

(1) All waters which flow or are removed from underground operations or underground waters which are removed from other areas to facilitate mining and which discharge to surface waters must be passed through appropriate treatment facilities prior to discharge where necessary to meet effluent limitations. Sedimentation ponds required by this chapter shall be constructed in accordance with 405 KAR 3:170 in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this chapter.

(2) Discharges from underground workings, other discharges of underground water, and discharges from areas disturbed by surface operations and reclamation activities must meet all applicable federal and state regulations and, at a minimum, the following numerical effluent limitations:

Effluent Limitations, in Milligrams per Liter, mg/l, except for pH		
Effluent characteristics	Maximum allowable*	Average of daily values for 30 consecutive discharge days*
Iron, total.....	7.0	3.5
Manganese, total.....	4.0	2.0
Total suspended solids	70.0	35.0
pH**	Within the range 6.0 to 9.0	

* Based on representative sampling.

** Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth, the department may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

(3) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than the ten (10) year twenty-four (24) hour frequency event will not be subject to the effluent limitations listed in subsection (2) of this section.

(4) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or state regulations or the limitations listed in subsection (2) of this section.

(5) If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the department shall be installed, operated, and maintained. If the department finds that small and infrequent treatments are required to meet effluent limitations and do not necessitate use of an automatic neutralization process, and the mine normally produces less than 500 tons of coal per day, then the department may approve the use of a manual system if the department finds that consistent and timely treatment can be assured by the permittee.

Section 2. Surface Water Monitoring. (1) The permittee shall submit for approval by the department a surface water monitoring program which meets the following requirements.

(a) Provides adequate monitoring of all discharge from the disturbed area and from the underground operations.

(b) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of flow, pH, total iron, total manganese, and total suspended solids and, as requested by the department, any other parameter characteristic of the discharge.

(c) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

(d) provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136.

(e) Provides regular reports of all measurements to the department within sixty (60) days of sample collection unless violations of permit conditions occur in which case the department shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulation by a federal or state permit issued in compliance with Section 301 of the Federal Water Pollution Control Act Amendment of 1972, a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the department to satisfy the reporting requirements of this regulation if the data meet the frequency and other requirements of this section.

(2) Equipment, structures, or other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained and operated and shall be removed when no longer required.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:150. Ground water systems.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for protection of the ground water system and ground water monitoring.

Section 1. Ground Water Systems. Underground operations shall be conducted to minimize adverse effects on

ground water flow and quality, and to minimize offsite effects. The permittee will be responsible for performing monitoring according to Section 2 of this chapter to ensure operations conform to this requirement.

Section 2. Monitoring. Ground water levels, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the department to determine the effects of underground coal mining operations on the quantity and quality of water in ground water systems at the mine area and in associated off-site areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells which can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The department may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the department, additional hydrologic tests, such as aquifer tests, must be undertaken by the permittee to demonstrate compliance with Section 1 of this regulation.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

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**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:160. Diversions of surface and underground flows.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements relating to diversions of surface and underground water flows.

Section 1. Diversions of Overland Flows. In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, if required or approved by the department, be diverted away from disturbed areas by

means of temporary or permanent diversion structures. the following requirements shall be met:

(1) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to stream-flow or to runoff outside the permit area to the extent possible using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable state or federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(2) Temporary diversion structures are those used during surface operations and reclamation. When no longer needed, these structures shall be removed and the areas reclaimed. Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one (1) year recurrence interval, or a larger event as specified by the department. The design criteria must assure adequate protection of the environment and public during existence of the temporary diversion structures.

(3) Permanent diversion structures are those remaining after surface operations and reclamation and approved for retention by the department and other appropriate state and federal agencies. To protect fills and property, to prevent water from contacting toxic-producing deposits, and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval or a larger event as specified by the department. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the department.

Section 2. Stream Channel Diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the department and they are in compliance with local, state, and federal statutes and regulations. When stream-flow is allowed to be diverted, a new stream channel shall be designed and constructed to meet the requirements of this section.

(a) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to stream-flow or to runoff outside the permit area to the extent possible using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the department for temporary diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.

(b) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a ten (10) year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the department.

(c) Fish and wildlife habitat and water vegetation of significant value for wildlife shall be protected in consultation with appropriate state and federal fish and wildlife management agencies.

(2) All temporary diversion structures shall be removed, and the affected land regraded and revegetated consistent with the requirements of this chapter regarding backfilling, grading and revegetation. At the time such diversions are removed, the permittee shall insure that downstream water treatment facilities previously protected by the diversion are either modified or removed to prevent overtopping or failure of the facilities.

Section 3. Stream Buffer Zone. No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface operations of underground coal mining unless the department specifically authorizes operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 3:070 regarding signs and markers.

Section 4. Discharge Structures. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

Section 5. Discharge of Waters into Underground Mines. Surface and ground waters shall not be discharged or diverted into underground mine workings.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary

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DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:170. Sediment control measures.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for sediment control measures.

Section 1. Sediment Control Required. Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to streamflow or to runoff outside the permit area to the extent possible using the best technology currently available.

(1) Sediment control measures include practices carried out within and adjacent to the disturbed area. For the purposes of this regulation, disturbed area shall not include those areas in which only diversion ditches, sedimentation pond, or roads are installed and the upstream area is not otherwise disturbed by the mining operation. The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the sediment. Sediment control measures consist of the utilization of proper mining, reclamation methods, and sediment control practices (singly or in combination) including but not limited to:

(a) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and timely revegetation.

(b) Consistent with the requirements of 405 KAR 3:100 and 405 KAR 3:110 of this chapter shaping the backfill material to promote a reduction of the rate and volume of runoff;

(c) Retention of sediment within the pit and disturbed area;

(d) Diversion of overland and channelized flow from undisturbed areas around or in protected crossings through the disturbed area;

(e) Utilization of straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume or entrap sediment; and

(f) Sedimentation ponds.

(2) All surface drainage from the disturbed area including disturbed areas which have been graded, seeded, or planted shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed area has met the water quality requirements and the revegetation requirements of these regulations have been met. The department may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if it is demonstrated that sedimentation ponds are not necessary to meet the effluent limitations and to maintain water quality in downstream receiving waters. All sedimentation ponds required shall be constructed in accordance with this chapter and in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water. Sedimentation ponds shall be certified by a qualified registered engineer as having been constructed as designed and as approved by the department. Sedimentation ponds may be used individually or in series, should be located as near as possible to the disturbed area and where possible out of major stream course, and shall (either individually or in series) meet the following criteria:

(a) Sedimentation ponds must provide twenty-four (24) hour theoretical detention time for the inflow or runoff entering the ponds from a ten (10) year, twenty-four (24) hour precipitation event. Runoff diverted, in accordance with 405 KAR 3:160 away from the disturbed drainage areas need not be considered in sedimentation pond design. In determining the runoff volume the characteristics of the mine site, reclamation procedures, and on-site sediment control practices shall be considered.

(b) Upon approval of the department theoretical detention time may be reduced to not less than ten (10) hours, as demonstrated by the applicant, equal to the improvement in sedimentation removal efficiency as a result of pond design including but not limited to pond configuration, inflow-outflow facilities, and their relative location, baff-

fles to decrease inflow velocity and short circuiting, a surface area sufficient to achieve the sediment trap efficiency necessary to meet effluent limitations as provided in 405 KAR 3:140, and sediment control measures as provided in this regulation.

(c) The department may approve a detention time less than the time required by paragraphs (a) or (b) of this subsection when the applicant has demonstrated that the size distribution or the specific gravity of the suspended matter or the utilization of chemical treatment or flocculation are such that the effluent limitations can be met. The detention time shall be stipulated.

(3) An additional sediment storage volume must be provided equal to 0.2 acre-feet for each acre of disturbed area within the upstream drainage area. Upon approval of the department, the sediment storage volume may be reduced in amount, as demonstrated by the applicant, equal to the sediment removed by other appropriate sediment control measures such as those identified in subsection (1) of this section, or by lesser sediment yields as evidenced by empirical data for runoff characteristics.

(4) Ponds may be of the permanent pool or self-dewatering type. Dewatering-type ponds shall use siphon or other dewatering methods approved by the department to prevent discharges of pollutants within the design flow.

(5) Spillway systems shall be properly located to maximize the distances from the point of inflow into the pond to maximize detention times. Spillway systems shall be provided to safely discharge the peak runoff from a precipitation event with a twenty-five (25) year recurrence interval, or larger event as specified by the department.

(6) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations. Sediment removal shall be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and ground water quality. Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas in accordance with 405 KAR 3:080.

(7) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the additional requirements of this subsection shall be met.

(a) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, six (6) hour precipitation event, or larger event as specified by the department.

(b) Ponds shall be designed and constructed with an acceptable static safety factor of at least 1.5 maximum design flood elevation of the pool to ensure embankment slope stability.

(c) The minimum top width of the embankment shall not be less than the quotient of $(H + 35)/5$ where H is the height of the embankment as measured from the upstream toe to the top of the embankment.

(d) Ponds shall have appropriate barriers to control seepage along conduits that extend through the embankment.

(8) All ponds shall be designed, constructed and inspected under the supervision of a registered professional engineer who after construction shall certify that the struc-

ture was constructed according to his design and as approved by the department.

(9) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR 77.216.3.

(10) All ponds shall be removed and the affected land regraded and revegetated consistent with the requirements of 405 KAR 3:100 and 405 KAR 3:080 of this chapter, unless the department approves retention of the ponds pursuant to 405 KAR 3:190 with regard to permanent impoundments.

(11) In the design of sedimentation ponds pursuant to this regulation, the responsible design engineer shall determine the structure hazard classification as set forth in 405 KAR 3:020 and the structure hazard classification shall be clearly shown on the first sheet of the design drawings.

(12) Sedimentation ponds classified (B)—moderate hazard or (C)—high hazard, shall be approved by the department, designed, constructed and maintained according to the provisions of KRS 151.250 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

405 KAR 3:180. Coal waste dams.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for the design, construction, maintenance and reclamation of coal waste dams.

Section 1. General. No waste material shall be used in or impounded by existing or new dams without the approval of the department. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this regulation.

Section 2. Construction of Dams. (1) Waste shall not be used in the construction of dams unless demonstrated

through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of 30 CFR 77.216(a) shall be approved by the department before construction and shall contain the minimum plan requirements established by the Mine Safety and Health Administration pursuant to 30 CFR 77.216-2.

(3) Construction requirements are as provided in this subsection:

(a) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the department.

(b) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least three (3) feet to avoid overtopping by wind and wave action.

(c) Dams shall have minimum safety factors as provided in the following table:

Case	Loading Condition	Minimum Safety Factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation	1.5
III	Steady seepage from spillway or decant crest	1.5
IV	Earthquake (cases II and III with seismic loading)	1.0

(d) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in this regulation and for all increments of construction.

(e) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(f) Allowances shall be made for settlement of dams and foundations so that the required freeboard will be maintained.

(g) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated within ten (10) days by spillways or decants of ninety (90) percent of the volume of water stored during the design precipitation event.

(h) During construction of dams subject to this regulation the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(i) A permanent identification marker, at least six (6) feet high that shows the dam number assigned pursuant

to 30 CFR 77.216-1 and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within thirty (30) days of certification of design pursuant to this regulation.

(4) All dams, including those not meeting the size or other criteria of 30 CFR 77.216-1, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mine Safety and Health Administration regulations pursuant to 30 CFR 77.216-3.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this regulation shall be certified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual certification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the department before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the department approves retention of such dams as being compatible with an approved postmining land use.

(9) Coal waste dams constructed pursuant to this regulation shall be approved by the department, designed, constructed and maintained according to the provisions of KRS 151.250 and regulations adopted pursuant thereto.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

**DEPARTMENT FOR NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:190. Permanent impoundments.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground coal mining. This regulation sets forth requirements for permanent water impoundments.

Section 1. General Requirements. The permittee may construct, if authorized by the department, permanent water impoundments on mining sites only when they are adequately demonstrated to be in compliance with the requirements of this chapter in addition to the following requirements:

(1) The size of the impoundment is adequate for its intended purposes.

(2) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006).

(3) The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable federal and state law.

(4) The level of water will be reasonably stable.

(5) Final grading will comply with the provisions of the backfilling and grading requirements of 405 KAR 3:100 and will provide adequate safety and access for proposed water users.

(6) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

Section 2. Permanent impoundments shall be approved by the department, designed, constructed and maintained in accordance with the provisions of KRS 151.250 and regulations adopted pursuant thereto.

Section 3. The following regulations are hereby repealed: 402 KAR 1:025, 402 KAR 1:030, 402 KAR 1:035, 402 KAR 1:040, 402 KAR 1:045, 402 KAR 1:050, 402 KAR 1:055, and 402 KAR 1:060.

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: May 3, 1978

APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: May 3, 1978 at 4:40 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for June 15-16, 1978, at 10 a.m. EDT in the State Office Building Auditorium, Frankfort, Kentucky. For additional information or submission of written comments, contact Gene Brandenburg, Commissioner, Bureau of Surface Mining Reclamation and Enforcement, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction

704 KAR 3:285. Programs for the gifted and talented.

RELATES TO: KRS 158.600 to 158.620

PURSUANT TO: KRS 13.082, 156.070, 156.130, 156.160

NECESSITY AND FUNCTION: This regulation relates to the funding and operation of experimental programs for gifted and talented pupils and directs the Department of Education to administer the Gifted and Talented Education Act of 1978.

Section 1. Pursuant to the authority vested in the Kentucky State Board for Elementary and Secondary Education by KRS 156.070 and 156.160, the "Guidelines for Gifted and Talented Programs" are presented herewith for filing with the Legislative Research Commission, and incorporated by reference.

Section 2. The "Guidelines for Gifted and Talented Programs" shall be followed by local school districts in developing programs to apply for state funds to operate such programs.

Section 3. Each local school district receiving state funds for the operation of a gifted and talented program shall be evaluated by the State Department of Education, Bureau of Instruction, to determine the effectiveness of the program.

JAMES B. GRAHAM,
Superintendent of Public Instruction

ADOPTED: April 11, 1978

RECEIVED BY LRC: April 21, 1978 at 1:25 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Mr. Fred Schultz, Secretary, Kentucky State Board for Elementary and Secondary Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction

704 KAR 3:290. Title I, ESEA annual program plan.

RELATES TO: KRS 156.100

PURSUANT TO: KRS 13.082, 156.070, 156.130, 156.160

NECESSITY AND FUNCTION: In accordance with Section 434(b)(1) of the General Education Provisions Act, the Department of Education when applying to the U. S. Office of Education for participation under Title I of the Elementary and Secondary Education Act, must submit assurances relating to approval of application and enforcement of obligations, reports and statement of purpose.

Section 1. Pursuant to the authority vested in the Kentucky State Board for Elementary and Secondary Education by KRS 156.100, the Title I, ESEA, Annual Program Plan for fiscal year ending September 30, 1979, is presented herewith for filing with the Legislative Research Commission, and incorporated by reference.

JAMES B. GRAHAM,
Superintendent of Public Instruction

ADOPTED: April 11, 1978

RECEIVED BY LRC: April 21, 1978 at 1:25 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Mr. Fred Schultz, Secretary, Kentucky State Board
for Elementary and Secondary Education, 17th Floor,
Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Miner Training, Education and Certification

805 KAR 7:060. Program approval.

RELATES TO: KRS 351.101, 351.102, 351.105

PURSUANT TO: KRS 351.020, 351.106

NECESSITY AND FUNCTION: KRS 351.102 and 351.105 provide for the establishment of a program of training and education of inexperienced underground coal miners. This regulation sets forth the manner in which private and public concerns desiring to train inexperienced miners in accordance with the above-cited statutes may submit such programs for approval by the Board of Miner Training, Education and Certification.

Section 1. No person shall be issued a permit as a trainee miner unless that person has completed a program of training approved by the board.

Section 2. A program of training for inexperienced miners shall be approved by the board if such program, as a minimum, meets the criteria and objectives of 805 KAR 7:020, and the instructors teaching the program have been duly certified by the U. S. Department of Labor, Mine Safety and Health Administration or by the U. S. Department of the Interior, Mining Enforcement and Safety Administration.

Section 3. Approval of training programs for inexperienced miners may be obtained by sending to the Department of Mines and Minerals, Board of Miner Training, Education, and Certification, P. O. Box 680, Lexington, Kentucky 40586, the following information:

- (1) The address and location of the training facility to be utilized;
- (2) A description of the equipment and facilities to be utilized;
- (3) A list of the participating instructors;
- (4) The content areas in the training program for which each instructor shall be responsible;
- (5) The approximate number of students per class;
- (6) The dates on which the training program will be conducted;

(7) The name and address of the person responsible for the formulation and implementation of the training program;

(8) An outline of the proposed program showing how it meets the criteria and objectives of 805 KAR 7:020;

(9) A list of instructional material to be utilized (e.g. films, programmed material, etc.), noting where such material will be used within the instructional sequence; and

(10) A description of the instructional methods to be utilized throughout the program (e.g. lecture-demonstration, personalized instruction, team-teaching, etc.).

Section 4. (1) Any approval granted by the board in accordance with the provisions of this regulation shall be conditional upon the practical implementation of the training program in a manner consistent with the criteria and objectives of 805 KAR 7:020.

(2) The department shall have the authority to monitor any approved program without prior notice.

(3) The board shall revoke its approval of any program that does not meet the criteria and objectives of 805 KAR 7:020 as ascertained by a monitoring of that program by the department.

(4) The board may revoke its approval of any program or part thereof when a monitoring of that program reveals that the instructor has not conducted the program or part thereof in a manner consistent with the criteria and objectives of 805 KAR 7:020.

H. N. KIRKPATRICK, Commissioner

ADOPTED: May 5, 1978

APPROVED:

MIKE HELTON, Secretary

RECEIVED BY LRC: May 11, 1978 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Director, Board of Miner Training, Education and Certification, Department of Mines and Minerals, P. O. Box 680, Lexington, Kentucky 40586.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 2:045. Sewage.

RELATES TO: KRS Chapter 278

PURSUANT TO: KRS 13.082, 278.280(2)

NECESSITY AND FUNCTION: KRS 278.280(2) provides that the Commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to sewage utilities.

Section 1. General. The purpose of this regulation is to provide standard rules and regulations governing the service of sewage utilities operating under the jurisdiction of the Public Service Commission of Kentucky.

Section 2. Definitions. The following terms when used in these rules, shall have the meaning indicated:

(1) "Commission" means the Public Service Commission of Kentucky.

(2) "Collecting sewers" means sewers, including force lines, gravity sewers, interceptors, laterals, trunk sewers, manholes, lampholes and necessary appurtenances and including service wyes, which are used to transport sewage and are owned, operated, or maintained by a sewage disposal utility.

(3) "Customer" means any person, partnership, association, corporation or governmental agency being provided with sewage disposal service by a utility.

(4) "Customer's service pipe" means any sewer pipe extending from the customer's residence or other structure receiving and transporting sewage to the utility's collecting sewer, but excluding service wyes.

(5) "Lift station" means that portion of the sewage system which is used to lift the sewage to a higher elevation.

(6) "Premises" means a tract of land or real estate including buildings and other appurtenances thereon.

(7) "Sewage" means ground garbage, human and animal excretions, and all other domestic type waste normally disposed of by a residential, commercial, or industrial establishment, through the sanitary sewer system.

(8) "Sewage treatment facilities" includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, and controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for the public, or other beneficial or necessary purpose.

(9) "Sewage utility" means any person except a city, who owns, controls or operates or manages any facility used or to be used for in connection with the treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district. (KRS 278.010-3(f).)

Section 3. Filings with this Commission. In addition to all filing requirements provided by 807 KAR 1:010, Rules of Procedure, the following requirements must also be met for all formal applications (outlined below) by sewage utilities before this commission:

(1) Application for certificates of public convenience and necessity. In addition to the filing requirements provided by 807 KAR 1:010, Sections 7 and 8, the applicant shall submit with its application, the following:

(a) A copy of a valid third-party beneficiary agreement guaranteeing the continued operation of the sewage treatment facilities.

(b) A copy of a preliminary approval issued by the Division of Water Quality of the Kentucky Department for Natural Resources and Environmental Protection approving the plans and specifications of the proposed construction.

(c) A detailed map of the sewage treatment facilities showing location of plant, effluent discharge, collection mains, manholes, and utility service area.

(d) A detailed estimated cost of construction which should include all capitalized costs (construction, engineering, legal, administrative, etc.).

(e) A financial exhibit as described in Section 6 of 807 KAR 1:010.

(f) The manner in detail in which it is proposed to finance the new construction, specifically stating amount

to be invested, recouped through lot sales, or contributions (to be) received, etc.

(g) An estimated cost of operation after the proposed facilities are completed.

(h) An estimate of the total number of customers to be served by the proposed sewage treatment facilities, initially and ultimately the class of customers served (i.e., residential, commercial, apartments, recreational, institutional, etc.) and the average monthly water consumption for each class of customer.

(i) A copy of the latest tax returns (federal and state, if applicable) filed by the applicant.

(j) A detailed depreciation schedule of all treatment plant, property and facilities, both existing and proposed, listing all major components of "package," treatment plants separately.

(k) The proposed rates to be charged for each class of customers and an estimate of the annual revenues derived from the customers using the proposed rate schedules.

(l) A full and complete explanation of corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business to afford the commission a full and complete understanding of the situation.

(m) If the establishment of rates are not sought by the applicant, omit paragraphs (i), (j), and (k) above.

(2) Application for authority to adjust rates. In addition to the filing requirements provided by 807 KAR 1:010, Sections 6, 7, and 9, the applicant shall submit with its application, the following:

(a) A comparative income statement (PSC Form) showing test period; per books, revenues and expenses, pro forma adjustments to those figures, and explanations for each adjusted entry.

(b) A detailed analysis of any expenses contained in the comparative income statement which represent an allocation or proration of the total expense.

(c) A detailed depreciation schedule of all treatment plant properties and facilities, listing all major components of "package;" treatment plants separately.

(d) Copies of all service contracts entered into by the utility for outside services, such as but not limited to: operation and maintenance, sludge hauling, billing, collection, repairs, etc., in order to justify current contract services and charges or proposed changes in said contracts.

(e) A description of the applicant's property and facilities, including a statement of the net original cost (estimate if not known), the cost thereof to the applicant, and a current breakdown of contributed and non-contributed property and facilities owned by the applicant ("contributed property" means property paid for by others).

(f) A detailed customer listing showing number of customers in each customer class and average water consumption for each class of customers.

(g) If the utility has billing and collection services provided by the Louisville Water Company, remittance advices from the Louisville Water Company showing revenues and collection charges should be submitted for the test period.

(h) A copy of the latest tax returns (federal and state, if applicable) filed by the applicant.

(i) A full and complete explanation of corporate or business relationships between the applicant and a parent or brother-sister corporation, subsidiary(ies), a development corporation(s), or any other party or business, to afford the commission a full and complete understanding of the situation.

(3) Application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness. In addition to the filing requirements, provided by 807 KAR 1:010 Sections 6, 7, and 10, the applicant shall submit with its application the following:

(a) Copy of amortization schedules of present and proposed indebtedness.

(b) A full and complete explanation of any corporate or business relationships between the applicant and a parent or brother-sister corporation subsidiary(ies), a development corporation(s), or any other party or business to afford the commission a full and complete understanding of the situation.

Section 4. Information Available to Customers. (1) System maps or records. Each utility shall maintain up-to-date maps, plans, or records of its entire force main and collection systems, with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving any locality.

(2) Rates, rules, and regulations. A schedule of approved rates for sewage service applicable for each class of customers and the approved rules and regulations of the sewage utility shall be available to any customer or prospective customer upon request.

Section 5. Quality of Service. (1) General. Each utility shall maintain and operate sewage treatment facilities of adequate size and properly equipped to collect, transport, and treat sewage, and discharge the effluent at the degree of purity required by the health laws of the State of Kentucky, and all other regulatory agencies, federal, state, and local, having jurisdiction over such matters.

(2) Limitations of service. No sewage disposal company shall be obliged to receive for treatment or disposal any material except sewage as defined by Section 2(7). In compliance with the regulation, the utility shall make all reasonable efforts to eliminate or prevent the entry of surface or ground water, or any corrosive or toxic industrial liquid waste into its sanitary sewer system. A utility may request assistance from the appropriate state, county, or municipal authorities in its efforts, but such a request does not relieve the utility of its aforementioned responsibilities.

Section 6. Continuity of Service. (1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to re-establish service with the shortest possible delay consistent with the safety of its customers and the general public.

(2) Scheduled interruptions. Whenever any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at such hours as will provide least inconvenience to the customers.

(3) Record of interruptions. Each utility shall keep a complete record of all interruptions on its system. This record shall show the cause of interruption, date, time, duration, remedy, and steps taken to prevent recurrence.

Section 7. Design, Construction, and Operation. (1) General. The sewage treatment facilities of the sewage utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice to assure, as far as reasonably possible, continuity

of service, uniformity in the quality of service furnished, and the safety of persons and property.

(2) Design and construction requirements. The design and construction of the sewage utility's collecting sewers, treatment plant and facilities, and all additions thereto and modifications thereof, shall conform to the requirements of the Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, Division of Water Quality.

(3) Adequacy of facilities. The capacity of the sewage utility's sewage treatment facilities for the collection, treatment and disposal of sewage and sewage effluent must be sufficiently sized to meet all normal demands for service and provide a reasonable reserve for emergencies.

(4) Inspection of facilities. Each sewage utility shall adopt procedures for inspection of its sewage treatment facilities to assure safe and adequate operation of its facilities and compliance with Public Service Commission rules. These procedures shall be filed with the commission. Unless otherwise authorized in writing by the commission, the sewage utility shall make inspections of collecting sewers and manholes on a scheduled basis at intervals not to exceed one (1) year, unless conditions warrant more frequent inspections and shall make inspections of all mechanical equipment on a daily basis. The sewage utility shall maintain a record of findings and corrective actions required, and/or taken, by location and date.

Section 8. Service Pipe Connections. (1) Sewage utility's service pipe. The sewage utility shall install and maintain that portion of the service pipe from the main to the boundary line of the easement, public road, or street, under which such main may be located.

(2) Customer's service pipe.

(a) The customer shall install and maintain that portion of the service pipe from the end of the sewage utility's portion into the premises served.

(b) Requirements for customer's service pipe. That portion of the service pipe installed and maintained by the customer shall conform to all reasonable rules of the utility. It shall be constructed of materials approved by the sewage utility and installed under the inspection of the sewage utility.

(3) Restriction on installation. A sewer service pipe shall not be laid in the same trench with a water pipe.

(4) Inspection. If a governmental agency requires an inspection of the customer's plumbing, the sewage utility shall not connect the customer's service pipe until it has received notice from the inspection agency certifying that the customer's plumbing is satisfactory.

RICHARD S. TAYLOR, Chairman

ADOPTED: April 19, 1978

APPROVED:

MIKE HELTON, Secretary

RECEIVED BY LRC: May 15, 1978 at 2:15 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary, Public Service Commission, 730 Schenkel
Lane, P. O. Box 615, Frankfort, Kentucky 40601.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of May 3, 1978 Meeting

(Subject to Subcommittee approval at its next meeting on June 7, 1978.)

The Administrative Regulation Review Subcommittee held its regularly scheduled meeting on Wednesday, May 3, 1978, at 10 a.m., in Room 327 of the Capitol.

The minutes of the April 3 meeting were approved. Present were:

Members: Representative William T. Brinkley, Chairman and Representative Albert Robinson.

Guests: Representative James Yates; Deborah Herd; Howard H. Browning; Eugene Perkins, Judith G. Walden and James R. Smith, Department of Housing; Carl Kays and Joe Bruna, Department of Fish and Wildlife Resources; Martin Glazer, Board of Accountancy and Board of Claims; Ed Fossett, Conley Manning, Eugene Robinson and James Baker, Department of Education; Omar L. Greeman, Department for Human Resources; Jim Ludwiczak, Department of Mines and Minerals; Robert Harrison, Department of Labor; Carl B. Larsen, Kentucky Harness Racing Commission; A. B. Hunter, Code Consultant; Stephen E. Klamke and Stanley A. Mruk, Plastics Pipe Institute; Martin W. Palmer and Frank W. Pfeiffer, Louisville Plumbers Local 107; Charles M. Koeig, John L. Zehnder, Jr., Charles E. Schmidt and Edward Jungbert, Mechanical Contractors Association of Kentucky; Bill Meyers, Kentucky Association of Plumbing, Heating, Cooling Contractors, Inc.; Bill Cownie, Home Builders Association of Kentucky; Robert Shively, Central Foundry Company; Charles W. Henry, Bowling Green Plumbing and Heating Company; John B. English, John B. English and Sons, Inc.; T. C. Brown, Cast Iron Soil Pipe Institute.

LRC Staff: Mabel D. Robertson, Garnett Evins, Joe Hood, Janet Kemp, Grant Winston, Jeff Hohman and Al Feldbaum.

The following regulations were deferred on motion of Representative Robinson, seconded by Chairman Brinkley, until the June 7 meeting. Chairman Brinkley stated he would like additional time to consider the lengthy testimony presented by the proponents and opponents of the regulations.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Environmental Protection

Division of Plumbing

401 KAR 1:030. Quality and weight of materials.

401 KAR 1:060. Soil, waste and vent systems.

401 KAR 1:100. House sewers and storm water piping; method of installation.

The following regulations were deferred at the request of the issuing agencies:

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Environmental Protection

Division of Plumbing

401 KAR 1:105. Subsurface sewerage disposal systems.

DEPARTMENT OF EDUCATION

Bureau of Instruction

Health and Physical Education Programs

704 KAR 4:010. Physical education.

DEPARTMENT FOR HUMAN RESOURCES

Bureau for Administration and Operation

Certificate of Need and Licensure Board

902 KAR 20:077. Group home standards; operations and services.

On motion of Representative Robinson, seconded by Chairman Brinkley, the following regulations were approved and ordered filed:

BOARD OF CLAIMS

Practice and Procedure

108 KAR 1:010. Board operation and claim procedure.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION

Division of Occupations and Professions

Board of Accountancy

201 KAR 1:090. Practice by non-residents.

CABINET FOR DEVELOPMENT

Department of Fish and Wildlife Resources

Game

301 KAR 2:045. Upland game birds, furbearers and small game; seasons, limits.

Hunting and Fishing

301 KAR 3:021. Hunting and fishing license fees. (This regulation will be amended to comply with the subcommittee's objections during the meeting.)

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Environmental Protection

Division of Plumbing

401 KAR 1:090. Water supply and distribution.

DEPARTMENT OF EDUCATION

Bureau of Instruction

Elementary and Secondary Education Act

704 KAR 10:022. Elementary, middle and secondary school standards.

Bureau of Vocational Education

Administration

705 KAR 1:020. Occupational appeals officer.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Labor

Occupational Safety and Health

803 KAR 2:016. Construction industry standards.

803 KAR 2:020. Adoption of 29 CFR Part 1910.

Department of Mines and Minerals

Division of Explosives and Blasting

805 KAR 4:010. Licensing Blasters. (Amended after hearing.)

805 KAR 4:030. Seismograph measurements. (Not amended after hearing.)

805 KAR 4:070. Definitions. (Not amended after hearing.)

805 KAR 4:075. General blasting provisions. (Amended after hearing.)

805 KAR 4:087. Explosives. (Not amended after hearing.)

805 KAR 4:095. Loading of explosives or blasting agents. (Not amended after hearing.)

805 KAR 4:100. Surface transportation of explosives. (Not amended after hearing.)

805 KAR 4:110. Initiation of explosive charges; electric blasting. (Not amended after hearing.)

805 KAR 4:115. Safety fuses. (Not amended after hearing.)

805 KAR 4:125. Firing the blast. (Not amended after hearing.)

805 KAR 4:140. Misfires. (Not amended after hearing.)

Kentucky Harness Racing Commission

Harness Racing Rules

811 KAR 1:005. Definitions.

811 KAR 1:045. Entries.

811 KAR 1:055. Declaration to start; drawing horses.

DEPARTMENT FOR HUMAN RESOURCES

Bureau for Administration and Operations

Vital Statistics

901 KAR 5:040. Verification of birth and death facts.

Bureau for Health Services

Communicable Diseases

902 KAR 2:080. Venereal disease.

Regional Mental Health-Mental Retardation Boards

902 KAR 6:040. Hospital district assignments.

The meeting adjourned at 1:25 p.m., to meet again on June 7, 1978, at 10 a.m., in Room 327 of the Capitol.

Administrative Register ^{of} kentucky

Cumulative Supplement

Regulation Locator — Effective Dates L 2

KRS Sections Cited or Related to KAR L 5

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Regulation Locator—Effective Dates

Volume 4

Emergency Regulation	4 Ky.R. Page No.	Effective Date	Regulation	4 Ky.R. Page No.	Effective Date	Regulation	4 Ky.R. Page No.	Effective Date
200 KAR 2:050E	251	1-4-78	405 KAR 3:070E	415	5-3-78	201 KAR 1:090		
Expired		5-4-78	Expires		8-31-78	Amended	321	5-3-78
200 KAR 8:020E	369	4-21-78	405 KAR 3:080E	415	5-3-78	201 KAR 2:015	218	1-4-78
Expires		8-19-78	Expires		8-31-78	201 KAR 2:050		
201 KAR 8:220E	39	7-26-77	405 KAR 3:090E	415	5-3-78	Amended	122	11-2-77
Expired		11-23-77	Expires		8-31-78	201 KAR 5:035	464	
301 KAR 2:024E	119	8-22-77	405 KAR 3:100E	416	5-3-78	201 KAR 7:010	89	10-5-77
Expired		12-18-77	Expires		8-31-78	201 KAR 7:020	89	10-5-77
301 KAR 2:026E	143	10-4-77	405 KAR 3:110E	418	5-3-78	201 KAR 7:030	90	10-5-77
Expired		2-1-78	Expires		8-31-78	201 KAR 7:040	90	10-5-77
302 KAR 20:041E	315	3-15-78	405 KAR 3:120E	419	5-3-78	201 KAR 7:050	91	10-5-77
Expired		4-14-78	Expires		8-31-78	201 KAR 7:060	91	10-5-77
302 KAR 20:042E	343	4-4-78	405 KAR 3:130E	420	5-3-78	201 KAR 7:070	91	10-5-77
Expires		8-2-78	Expires		8-31-78	201 KAR 7:080	92	10-5-77
405 KAR 1:010E	370	5-3-78	405 KAR 3:150E	420	5-3-78	201 KAR 7:090	92	11-2-77
Expires		8-31-78	Expires		8-31-78	201 KAR 7:100	92	10-5-77
405 KAR 1:020E	373	5-3-78	405 KAR 3:160E	421	5-3-78	201 KAR 7:110	94	10-5-77
Expires		8-31-78	Expires		8-31-78	201 KAR 8:220		
405 KAR 1:030E	374	5-3-78	405 KAR 3:180E	422	5-3-78	Amended	52	
Expires		8-31-78	Expires		8-31-78	Amended	253	12-27-77
405 KAR 1:040E	375	5-3-78	405 KAR 3:190E	423	5-3-78	201 KAR 11:005		
Expires		8-31-78	Expires		8-31-78	Amended	433	
405 KAR 1:050E	376	5-3-78	601 KAR 9:014E	223	12-9-77	201 KAR 11:030		
Expires		8-31-78	Expired		4-7-78	Amended	97	8-3-77
405 KAR 1:060E	381	5-3-78	702 KAR 3:151E	316	3-8-78	201 KAR 11:147	97	8-3-77
Expires		8-31-78	Expires		7-6-78	201 KAR 12:155	97	8-3-77
405 KAR 1:070E	383	5-3-78	803 KAR 2:020E	345	4-7-78	201 KAR 12:157	98	8-3-77
Expires		8-31-78	Expires		8-5-78	201 KAR 12:160	99	8-3-77
405 KAR 1:080E	384	5-3-78	807 KAR 2:053E	316	3-13-78	201 KAR 19:025		
Expires		8-31-78	Expires		7-11-78	Amended	180	1-4-78
405 KAR 1:090E	385	5-3-78	904 KAR 2:014E	40	8-1-77	201 KAR 19:030		
Expires		8-31-78	Expired		11-25-77	Amended	180	1-4-78
405 KAR 1:100E	387	5-3-78				201 KAR 19:040		
Expires		8-31-78				Amended	181	
405 KAR 1:110E	388	5-3-78		4 Ky.R. Page No.	Effective Date	Amended	299	2-1-78
Expires		8-31-78	Regulation			201 KAR 19:045		
405 KAR 1:120E	389	5-3-78	11 KAR 5:010	428		Amended	181	1-4-78
Expires		8-31-78	Amended			201 KAR 19:050		
405 KAR 1:130E	390	5-3-78	11 KAR 5:020	428		Amended	183	1-4-78
Expires		8-31-78	Amended			201 KAR 19:085		
405 KAR 1:140E	392	5-3-78	11 KAR 5:030	430		Amended	183	1-4-78
Expires		8-31-78	Amended			201 KAR 19:095		
405 KAR 1:150E	394	5-3-78	11 KAR 5:032	461		Amended	120	9-7-77
Expires		8-31-78	11 KAR 5:050	430		201 KAR 20:130		
405 KAR 1:160E	394	5-3-78	Amended			Amended	122	11-2-77
Expires		8-31-78	11 KAR 5:060	430		201 KAR 25:010	292	
405 KAR 1:180E	395	5-3-78	Amended			Withdrawn		3-2-78
Expires		8-31-78	11 KAR 5:070	431		201 KAR 25:011	466	
405 KAR 1:190E	396	5-3-78	Amended			201 KAR 25:020	293	
Expires		8-31-78	11 KAR 5:080	432		Withdrawn		3-2-78
405 KAR 1:210E	397	5-3-78	Amended			201 KAR 25:021	466	
Expires		8-31-78	11 KAR 5:085	432		201 KAR 25:030	293	
405 KAR 1:220E	398	5-3-78	Amended			Withdrawn		3-2-78
Expires		8-31-78	11 KAR 5:100	432		201 KAR 25:040	294	
405 KAR 1:230E	398	5-3-78	Amended			Withdrawn		3-2-78
Expires		8-31-78	13 KAR 1:015	1	7-6-77	301 KAR 1:055		
405 KAR 1:240E	399	5-3-78	101 KAR 1:050			Amended	123	11-2-77
Expires		8-31-78	Amended	14	9-7-77	301 KAR 1:075		
405 KAR 1:250E	399	5-3-78	103 KAR 7:020	461		Amended	123	11-2-77
Expires		8-31-78	103 KAR 35:011	461		201 KAR 1:090		
405 KAR 3:010E	401	5-3-78	108 KAR 1:010			Amended	124	11-2-77
Expires		8-31-78	Amended	320	5-3-78	Amended	349	
405 KAR 3:020E	405	5-3-78	200 KAR 2:050			301 KAR 1:132		
Expires		8-31-78	Amended	253	3-3-78	Amended	125	
405 KAR 3:030E	406	5-3-78	200 KAR 4:015	462		Amended	227	12-7-77
Expires		8-31-78	200 KAR 6:030	224	12-7-77	301 KAR 1:140	136	12-7-77
405 KAR 3:040E	407	5-3-78	200 KAR 8:020	463		301 KAR 1:145		
Expires		8-31-78	200 KAR 9:010	463		Amended	16	9-7-77
405 KAR 3:050E	408	5-3-78	201 KAR 1:065			301 KAR 1:150		
Expires		8-31-78	Amended	254	3-3-78	Amended	99	8-3-77
405 KAR 3:060E	413	5-3-78				301 KAR 2:045		
Expires		8-31-78				Amended	321	5-3-78

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301 KAR 2:047			405 KAR 3:050	510		704 KAR 10:022		
Amended	350		405 KAR 3:060	515		Amended	322	5-3-78
301 KAR 2:101	336		405 KAR 3:070	516		704 KAR 20:005		
301 KAR 2:105			405 KAR 3:080	517		Amended	19	9-7-77
Amended	6	7-6-77	405 KAR 3:100	518		704 KAR 20:020		
Amended	433		405 KAR 3:110	520		Amended	455	
301 KAR 3:020			405 KAR 3:120	521		704 KAR 20:076	36	9-7-77
Amended	126	12-7-77	405 KAR 3:130	522		704 KAR 20:078	36	9-7-77
Repeated	337	5-3-78	405 KAR 3:140	522		704 KAR 20:080		
301 KAR 3:021	337		405 KAR 3:150	523		Amended	19	9-7-77
Amended	424	5-3-78	405 KAR 3:160	524		704 KAR 20:194	36	9-7-77
301 KAR 3:053	245	2-1-78	405 KAR 3:170	525		704 KAR 20:212	104	8-3-77
301 KAR 3:060			405 KAR 3:180	526		704 KAR 20:230		
Repeated	137	11-2-77	405 KAR 3:190	528		Amended	20	9-7-77
301 KAR 3:061	137	11-2-77	500 KAR 1:015			704 KAR 20:235		
302 KAR 20:010			Rejected	142	9-7-77	Amended	20	9-7-77
Amended	52	11-2-77	500 KAR 5:005			704 KAR 20:245		
302 KAR 20:040			Amended	103	8-3-77	Amended	21	9-7-77
Amended	53	11-2-77	503 KAR 1:040			704 KAR 20:255		
302 KAR 20:060			Amended	104	8-3-77	Amended	21	9-7-77
Amended	56	11-2-77	503 KAR 5:030			705 KAR 1:010		
302 KAR 20:070			Amended	51	8-3-77	Amended	22	9-7-77
Amended	58	11-2-77	601 KAR 1:110			705 KAR 1:020	248	2-1-78
302 KAR 20:080			Amended	438		Amended	323	5-3-78
Amended	60	11-2-77	601 KAR 9:014	247	2-1-78	705 KAR 7:050		
303 KAR 1:041	246		603 KAR 3:010			Amended	22	9-7-77
Amended	347	4-5-78	Amended	439		706 KAR 1:010		
303 KAR 1:075	247	2-1-78	603 KAR 3:020			Amended	149	
303 KAR 1:080			Amended	127	11-2-77	Amended	229	12-7-77
Amended	229	2-1-78	Amended	442		707 KAR 1:003		
400 KAR 1:020	338		603 KAR 5:010			Amended	23	9-7-77
401 KAR 1:017	95	10-5-77	Amended	17		802 KAR 1:010		
401 KAR 1:030			Amended	228	12-7-77	Amended	456	
Amended	184		603 KAR 5:096			803 KAR 1:010		
401 KAR 1:060			Amended	18	9-7-77	Amended	65	
Amended	100	8-3-77	Amended	141	9-7-77	Amended	177	11-2-77
Amended	186		Amended	131	11-2-77	803 KAR 1:035	219	1-4-78
401 KAR 1:080			Amended	194	1-4-78	803 KAR 2:015	105	8-3-77
Amended	61	10-5-77	Amended	231	2-1-78	Amended	231	2-1-78
Amended	189		Amended (Part)	254	3-3-78	803 KAR 2:016	106	8-3-77
Withdrawn		4-19-78	Amended	300	4-5-78	Amended	234	2-1-78
401 KAR 1:090			Amended	447		Amended	323	5-3-78
Amended	190		701 KAR 1:020	448		803 KAR 2:020		
Amended	425		702 KAR 1:020	448		Amended	11	7-6-77
401 KAR 1:100			702 KAR 1:090	448		Amended	23	9-7-77
Amended	62	10-5-77	702 KAR 2:010			Amended	132	11-2-77
Amended	192		Amended	255	3-3-78	Amended	236	2-1-78
401 KAR 3:071	339		702 KAR 2:020			Amended	326	5-3-78
401 KAR 6:010			Amended	256	3-3-78	803 KAR 2:030		
Repeated	41	8-3-77	702 KAR 2:030			Amended	13	7-6-77
401 KAR 6:015	41	8-3-77	Amended	257	3-3-78	Amended	134	11-2-77
402 KAR 1:012	29		702 KAR 2:040			803 KAR 2:032		
405 KAR 1:010	467		Amended	258	3-3-78	Amended	135	11-2-77
405 KAR 1:020	470		702 KAR 2:080			803 KAR 25:025	137	11-2-77
405 KAR 1:030	471		Amended	259	3-3-78	804 KAR 4:190		
405 KAR 1:040	473		702 KAR 2:090			Amended	135	
405 KAR 1:050	474		Amended	260	3-3-78	Withdrawn		10-26-77
405 KAR 1:060	479		702 KAR 2:100			804 KAR 7:045	95	10-5-77
405 KAR 1:070	480		Amended	261	3-3-78	804 KAR 9:010		
405 KAR 1:080	482		702 KAR 4:020			Amended	67	10-5-77
405 KAR 1:090	482		Amended	449		805 KAR 4:010		
405 KAR 1:100	485		702 KAR 4:030			Amended	300	
405 KAR 1:110	486		Amended	449		Amended	426	5-3-78
405 KAR 1:120	487		702 KAR 4:050			805 KAR 4:030		
405 KAR 1:130	488		Amended	450		Amended	301	5-3-78
405 KAR 1:140	490		702 KAR 4:060			805 KAR 4:070		
405 KAR 1:150	492		Amended	450		Amended	301	5-3-78
405 KAR 1:160	492		702 KAR 4:070			805 KAR 4:075		
405 KAR 1:170	493		Amended	452		Amended	303	
405 KAR 1:180	494		702 KAR 4:080			Amended	427	5-3-78
405 KAR 1:190	495		Amended	453		805 KAR 4:087		
405 KAR 1:200	496		703 KAR 2:050			Amended	304	5-3-78
405 KAR 1:210	497		Amended	454		805 KAR 4:095		
405 KAR 1:220	498		704 KAR 3:285	528		Amended	305	5-3-78
405 KAR 1:230	499		704 KAR 3:290	528		805 KAR 4:100		
405 KAR 1:240	499		704 KAR 4:010			Amended	305	5-3-78
405 KAR 1:250	500		Amended	195	5-3-78	805 KAR 4:110		
405 KAR 3:010	502		704 KAR 5:050			Amended	306	5-3-78
405 KAR 3:020	505		Amended	455		805 KAR 4:115		
405 KAR 3:030	507		704 KAR 6:010			Amended	307	5-3-78
405 KAR 3:040	509		Amended	195	1-4-78	805 KAR 4:125		
						Amended	307	5-3-78

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805 KAR 4:140			902 KAR 1:081			902 KAR 1:324		
Amended	308	5-3-78	Amended	210	1-4-78	Amended	73	10-5-77
805 KAR 7:010	146	10-5-77	Amended	264	3-3-78	902 KAR 1:326		
805 KAR 7:020	147	10-5-77	Amended	359		Amended	74	10-5-77
805 KAR 7:030	173	10-5-77	902 KAR 1:090			902 KAR 1:328		
805 KAR 7:040	173	10-5-77	Amended	69	10-5-77	Amended	114	8-3-77
805 KAR 7:050	148	10-5-77	Amended	359		Amended	74	10-5-77
805 KAR 7:060	529		902 KAR 1:100			Amended	270	3-3-78
806 KAR 9:012	96		Amended	110	8-3-77	902 KAR 1:330	220	1-4-78
806 KAR 11:010	108	8-3-77	Amended	69	10-5-77	902 KAR 2:060		
806 KAR 12:025	294		Amended	210	1-4-78	Amended	114	8-3-77
806 KAR 50:200			Amended	360		902 KAR 2:080		
Amended	351		902 KAR 1:110			Amended	334	5-3-78
806 KAR 50:205			Amended	211	1-4-78	902 KAR 6:020		
Amended	196	2-1-78	902 KAR 1:120			Amended	115	8-3-77
807 KAR 2:045	529		Amended	111	8-3-77	902 KAR 6:040		
807 KAR 2:055	339		Amended	265	3-3-78	Amended	335	5-3-78
808 KAR 2:015			902 KAR 1:125			902 KAR 20:007		
Repealed	108	8-3-77	Amended	70	10-5-77	Amended	149	
808 KAR 2:016	52	8-3-77	Amended	360		Amended	348	4-5-78
808 KAR 2:025			902 KAR 1:130			902 KAR 20:025		
Repealed	108	8-3-77	Amended	211	1-4-78	Amended	75	10-5-77
808 KAR 2:026	108	8-3-77	Amended	265	3-3-78	902 KAR 20:030		
808 KAR 3:040	140		Amended	361		Amended	271	3-3-78
811 KAR 1:005			902 KAR 1:135	367		902 KAR 20:040		
Amended	328	5-3-78	902 KAR 1:140			Amended	275	3-3-78
811 KAR 1:035			Amended	70	10-5-77	902 KAR 20:050		
Amended	238	2-1-78	Amended	212	1-4-78	Amended	278	3-3-78
811 KAR 1:045			Amended	266	3-3-78	902 KAR 20:077	309	
Amended	330	5-3-78	902 KAR 1:141			902 KAR 47:020		
811 KAR 1:055			Amended	362		Amended	86	10-5-77
Amended	331	5-3-78	902 KAR 1:150			902 KAR 50:070		
811 KAR 1:067	366		Amended	212	1-4-78	Amended	88	10-5-77
811 KAR 1:090			Amended	266	3-3-78	902 KAR 105:010		
Amended	458		902 KAR 1:160			Amended	289	3-3-78
811 KAR 1:125			Amended	213	1-4-78	902 KAR 105:040		
Amended	240	2-1-78	902 KAR 1:170			Amended	290	3-3-78
811 KAR 1:200			Amended	111	8-3-77	902 KAR 105:050		
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