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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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Reclamation of Surface Effects of Mining

The following regulations, printed here in their final version, were originally published in the *Administrative Register of Kentucky*, June 1, 1978 edition, pp.467-528. Public hearing was held on June 15-16, 1978, with 28 regulations being amended as a result of the hearing. After submission of the "affirmative consideration" statement and necessary amendments, the regulations were considered by the Administrative Regulation Review Subcommittee on August 23 and September 6, 1978, and several additional amendments were agreed to in order that the regulations meet legislative intent that they be not more stringent than federal regulations on the same subject.

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 coal-bed 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 applicable state laws and regulations in a strip mining 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, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of 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.

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

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

(61) "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.

(62) "Toxic-mine drainage" means water that is discharged from active or abandoned mines and other areas affected by strip mining operations and which con-

tains 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.

(63) "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.

(64) "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.

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

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 federal, state or local government financed highway or other construction;

(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. (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 structure or facility which is used in connection with or to facilitate the strip mining of coal on or after May 3, 1978, shall function in accordance with the requirements of this chapter.

(b) Any structures or facilities which must be reconstructed to meet the requirements of paragraph (a) of

this subsection shall be reconstructed according to engineering plans prepared under the direction of a registered professional engineer. Upon completion of reconstruction, the responsible engineer 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 the approved design plans.

(c) In the case of sedimentation ponds or other impoundments proposed for reconstruction pursuant to paragraph (b) of this subsection, the responsible design engineer shall determine the structure hazard classification of the proposed reconstructed structure according to the classification descriptions in paragraph (d). 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.

(d) 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: 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.

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 depart-

ment, 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.

Section 7. Hearing. (1) Except for permit hearings pursuant to KRS 350.090(1), any person aggrieved by the actions of the department 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, unless the person complained against waives in writing the twenty-one (21) day period. 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, delivered personally or by certified mail, return receipt requested, 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 for non-appearance.

(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 combina-

tion 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 reasonable 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 to taking evidence, including but not limited to the use of mechanical recording devices for recording the testimony. 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. The department may cause the mechanical recording of the testimony to be transcribed. When certified as a true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(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 excep-

tions, 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).

Section 8. Experimental Practices. In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use (including recreational facilities), the department may authorize departures in individual cases on an experimental basis from the provisions of this chapter, with the concurrence of the Secretary of the Department of the Interior. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required existing provisions in this chapter; (ii) the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by the provisions of this chapter.

405 KAR 1:030. Small operator exemption.

RELATES TO: KRS 350.450 ³⁴
PURSUANT TO: KRS 13.082, 350.028, 350.450, 224.071

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(1)(c), (d) and (e) regard-

ing 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 requirements 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).

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) 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. The provisions of 405 KAR 1:050 shall apply with respect to this regulation, except:

(1) 405 KAR 1:050, Section 4(5), with regard to transportation plan;

(2) 405 KAR 1:050, Section 4(6), with regard to prime farmland;

(3) 405 KAR 1:050, Section 4(7), with regard to postmining land use;

(4) 405 KAR 1:050, Section 4(9), with regard to topsoil handling;

(5) 405 KAR 1:050, Section 4(13)(b), with regard to water quality standards and surface water monitoring;

(6) 405 KAR 1:050, Section 4(14), with regard to ground water.

Section 4. Environmental Protection Performance Standards. 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:

(1) **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.

(2) **Water quality standards and surface water monitoring:**

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

(b) 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.

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

(4) **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 in excess of 70 mg/l. 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.

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

(6) Topsoil handling. The provisions of 405 KAR 1:100 shall not apply with respect to this regulation.

Section 5. 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.

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

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, within thirty (30) days after filing, 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 pursuant to this section.

(2) The application shall include the information described in this subsection through subsection (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 permanent and temporary 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 ac-

companied by such number of copies as the department may determine, not to exceed five (5), 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 such number of copies as the department may determine, not to exceed 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 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 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 applicant 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. 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, 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) Complete, but separate and distinct copies of the application, in such number as the department may determine, not to exceed five (5), shall be submitted to the department at the location and address prescribed by the department. The department will 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, by certified mail, return receipt requested, or registered mail, of any deficiencies in the application, and allow it to be temporarily withdrawn for the purpose of correcting the deficiencies.

(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.

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 approve the application for a permit where the strip mining operation will adversely affect a wild river established pursuant 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 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.

(9) 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.

(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 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 incompleted 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 premises 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 and request 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.

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 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.

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 economic or public 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 as follows: (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) Agricultural or silvicultural.

(a) 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.

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

(c) 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.

(d) 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.

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

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

(8) 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 or subcategory in premining to postmining constitutes an alternate land use and the applicant shall meet the requirements of this regulation and all other applicable provisions of this chapter. Mountaintop removal operations must also meet the criteria of this regulation 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 regulation 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 ob-

tained 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.

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 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, except on heavily vegetated areas, 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.

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 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 the 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 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 ($\frac{1}{2}$) 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 in-

spection 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.

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 im-

mediately 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 as necessary.

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.

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.

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 appropriate 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 highwalls 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 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. (1) The requirements of this regulation with regard to backfilling and grading to achieve approximate original contour shall not apply to strip mining operations approved pursuant to 405 KAR 1:240.

(2) Where the entire coal seams in the upper part of a mountain, ridge or hill are mined by removing all of the overburden and some or all of the overburden is returned to the mined area, the provisions of this regulation shall apply and the department may require the retention of an outcrop barrier consisting of the toe of the coal seam and its associated overburden, of sufficient width to prevent slides and erosion.

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 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) 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.

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

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 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 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.

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.

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.

** Applicable only when runoff prior to treatment has a pH less than 6.0 or total iron greater than 10.0 mg/l.

*** 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 2. 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 (when the runoff prior to treatment has a pH less than 6.0 or total iron greater than 10.0 mg/l) 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.

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.

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; except with the approval of the department.

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 but in no event shall contributions be in excess of requirements set by applicable state or federal law.

(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 individually or in series, and should be located as near as possible to the disturbed area and where possible out of major stream courses.

(3) 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.

(4) All ponds shall be designed by a registered professional engineer.

(5) 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.

(6) 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.

(7) 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.

Section 2. The department may require other actions necessary to ensure that the provisions of this regulation are met.

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 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 (except those classified as Class (A) pursuant to 405 KAR 1:020 Section 5(2)(d)) 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.

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 (except those classified as Class (A) pursuant to 405 KAR 1:020 Section 5(2)(d)) shall be approved by the department, designed, constructed and maintained in accordance with the provisions of KRS 151.250 and regulations adopted pursuant thereto.

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.

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 outslopes 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 permit-

tee 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.

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.

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

(2) 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.

(3) 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.

(4) 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.

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 applicable state laws and regulations 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 ex-

cavated 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, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of 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 a reasonable abatement time.

(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 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.

(59) "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.

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

(61) "Suspended solids" means organic or inorganic materials carried or held in suspension in water and that

will remain on a 0.45 micron filter.

(62) "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.

(63) "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.

(64) "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.

(65) "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.

(66) "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.

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 an incidental part of federal, state or local government financed highway or other construction;

(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 function in accordance with the requirements of this chapter.

(b) Any structures or facilities which must be reconstructed to meet the requirements of paragraph (a) of this subsection shall be reconstructed according to engineering plans prepared under the direction of a registered professional engineer. Upon completion of reconstruction the responsible engineer 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 the design plans.

(c) In the case of sedimentation ponds or other impoundments proposed for reconstruction pursuant to paragraph (b), the responsible design engineer shall determine the structure hazard classification of the proposed reconstructed structure according to the classification descriptions in paragraph (d). 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.

(d) 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.

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) 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.

Section 7. Hearing. (1) Except for permit hearings pursuant to KRS 350.090(1), any person 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, unless the person complained against waives in writing the twenty-one (21) day period. 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, delivered personally or by certified mail, return receipt requested, 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 for non-appearance.

(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, including but not limited to the use of mechanical recording devices for recording the testimony. 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 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, 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 8. Experimental Practices. In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use (including recreational facilities), the department may authorize departures in individual cases on an experimental basis from the provisions of this chapter, with the concurrence of the Secretary of the Department of the Interior. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required existing provisions in this chapter; (ii) the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by the provisions of this chapter.

405 KAR 3:030. Small operator exemption.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151, 224.071

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.

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 the department finds that it is being employed by an operator in successive operations for the purpose of mining a single deposit of coal on excess of two (2) acres with the intent of avoiding performance standards not enforceable under this regulation.

(c) 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. The provisions of 405 KAR 3:050 shall apply with respect to this regulation, except:

(1) 405 KAR 3:050, Section 4(5), with regard to transportation plan;

(2) 405 KAR 3:050, Section 4(6), with regard to topsoil handling;

(3) 405 KAR 3:050, Section 4(10)(b), with regard to water quality standards and surface water monitoring; and

(4) 405 KAR 3:050, Section 4(11), with regard to ground water.

Section 4. Environmental Protection Performance Standards. 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:

(1) Water quality standards and surface water monitoring;

(a) The provisions of 405 KAR 3:140 shall not apply except with respect to discharges of water from underground workings.

(b) 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.

(2) Ground water. The provisions of 405 KAR 3:150 shall not apply with respect to this regulation.

(3) 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 contribution of suspended solids to surface runoff from the permit area in excess of 70 mg/l. 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.

(4) Topsoil handling. The provisions of 405 KAR 3:080, Section 1 shall not apply with respect to this regulation.

Section 5. 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; 405 KAR 3:060; and 405 KAR 3:140, Section 1(2) regarding discharges of water from underground workings; 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.

Section 6. Inspection and Enforcement Procedures. The provisions of 405 KAR 3:060 shall apply with respect to this regulation.

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, within thirty (30) days after filing 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, except for existing underground mining operations, 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 pursuant to this section.

(2) The application shall include the information described in this subsection through subsection (13) of this section, except that existing underground mining operations not engaging in new surface operations shall comply with only subsections (1), (2)(a) through (g), (3), (4) except for paragraph (c), (14) and (15) 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 permanent and temporary 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 such number of copies as the department may determine, not to exceed five (5), 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 such number of copies as the department may determine, not to exceed five (5), 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 660 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 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 applicant 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) Complete, but separate and distinct copies of the application, not to exceed five (5) in number as the department may determine, 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 by certified mail, return receipt requested, or registered mail, of any deficiencies in the application and allow the application to be temporarily withdrawn;

(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.

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 pursuant 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 authorizes operations through such a stream. The area not to be disturbed shall

be designated a buffer zone and be marked as specified in 105 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 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 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 and request 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.

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.

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 with durable and easily recognized markers, having the permit number permanently affixed thereto, and located so that adjacent markers are clearly visible.

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 introduced species statutes, and may not include poisonous or potentially toxic species.

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 3:140 shall not apply to drainage from access and haul roads located outside the disturbed area, as defined in 405 KAR 3:140, 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.

405 KAR 3:100. Backfilling and grading.

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 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). 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 high walls 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 cuts, 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.

405 KAR 3:110. Disposal of excess rock and earth.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 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 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 underdrain 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.

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.

405 KAR 3:120. Acid and toxic materials and waste materials.

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 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.

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, minimizing water contact time with waste materials, stabilizing disturbed areas through grading, diverting runoff, and 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.

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.

** Applicable only when runoff prior to treatment has a pH less than 6.0 or total iron greater than 10.0 mg/l.

*** 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 (when the runoff prior to treatment has a pH less than 6.0 or total iron greater than 10.0 mg/l), 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.

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 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 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.

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, except with approval of the department.

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 but in no event shall contributions be in excess of requirements set by applicable state or federal law.

(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, and should be located as near as possible to the disturbed area and where possible out of major stream courses.

(3) 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.

(4) All ponds shall be designed by a registered professional engineer.

(5) 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.

(6) 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.

(7) 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.

Section 2. The department may require other actions necessary to ensure that the provisions of this regulation are met.

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 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 (except those classified as Class (A) pursuant 405 KAR 3:020, Section 5(2)(d)) 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.

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 (except those classified Class (A) pursuant to 405 KAR 3:020, Section 5(2)(d)) 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.

Public Hearings Scheduled

DEPARTMENT OF FISH AND WILDLIFE RESOURCES

A public hearing will be held at 10 a.m. EDT October 10, 1978, in the first floor auditorium of the New State Office Building, Frankfort, Kentucky 40601 on the following proposed regulations:

- 301 KAR 2:055. Pits and blinds; restrictions. [5 Ky.R. 244]
- 301 KAR 2:085. Seasons and limits for migratory birds. [5 Ky.R. 279]
- 301 KAR 3:070. Goose harvest reporting. [5 Ky.R. 247]

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

A public hearing will be held at 9 a.m. EST November 3, 1978 in the auditorium of Capital Plaza Tower, Frankfort, Kentucky 40601 on the following regulation:

- 400 KAR 1:021. Selective cutting of timber in the Wild Rivers area. [5 Ky.R. 283]

DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION

A public hearing will be held at 10 a.m. EDT October 13, 1978 in the auditorium of Capital Plaza Tower, Room G-2, Frankfort, Kentucky 40601 on the following regulation:

- 815 KAR 40:010. Construction requirements to accommodate physically handicapped. [5 Ky.R. 254]

Emergency Regulation Now In Effect

JULIAN M. CARROLL, GOVERNOR
Executive Order 78-764
August 11, 1978

EMERGENCY REGULATION Department of Fish and Wildlife Resources

WHEREAS, the U. S. Fish and Wildlife Service, Department of the Interior, has jurisdiction in the regulation of hunting throughout the several states; and

WHEREAS, all regulation of season framework, daily bag and possession limits, and shooting hours for migratory species, by the Kentucky Department of Fish and Wildlife Resources, must comply with federal regulations; and

WHEREAS, the recent promulgation of federal hunting regulations makes it impossible for the Kentucky Department of Fish and Wildlife Resources to comply with the normal filing procedures under Chapter 13 of the Kentucky Revised Statutes; and

WHEREAS, the Commissioner of the Department of Fish and Wildlife Resources, in conjunction with the Secretary of the Development Cabinet, pursuant to Kentucky Revised Statutes 150.300, 150.305, 150.320, 150.330, 150.340, and 150.360, has promulgated the attached Regulation:

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 of Fish and Wildlife Resources that an emergency exists and direct that the attached Regulation become effective immediately upon being filed in the Office of the Legislative Research Commission.

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

CABINET FOR DEVELOPMENT Department of Fish and Wildlife Resources

301 KAR 2:027E. Doves, Woodcock, Wilson Snipe and Teal.

RELATES TO: KRS 150.300, 150.305, 150.320, 150.330, 150.340, 150.360

PURSUANT TO: KRS 13.082

EFFECTIVE: August 21, 1978

EXPIRES: December 19, 1978

NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport

and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply.

Section 1. Seasons: (1) Doves: September 1 through October 31; December 9 through December 17.

(2) Woodcock: October 6 through November 30; December 9 through December 17.

(3) Wilson snipe: October 6 through November 30; December 9 through December 17.

(4) Teal, statewide: September 2 through September 10.

Section 2. Limits:

	Bag Limits	Possession Limits
Doves	12	24
Woodcock	5	10
Wilson snipe	8	16
Teal	4	8

Section 3. Bag and Possession Limits: (1) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(2) The above species (except doves) dressed in the field, or being prepared for transportation, must have one (1) fully feathered wing or head attached to the bird for identification purposes. For further information on the above species, see Federal Register.

Section 4. Shooting Hours: (1) Doves: from 12 o'clock noon to one-half (½) hour before sunset prevailing time.

(2) Wilson snipe and woodcock: from one-half (½) hour before sunrise to sunset prevailing time.

(3) Teal: sunrise until sunset prevailing time.

Section 5. Falconry Hunting. The wildlife species listed in this regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits apply to falconry hunting.

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless stated below, all statewide migratory bird seasons apply to the following areas:

(1) Ballard Wildlife Management Area, located in Ballard County:

(a) Doves: September 1 through October 14. No firearms permitted on this area except during shooting hours.

(b) Woodcock and snipe: Seasons closed.

(2) West Kentucky Wildlife Management Area, located in McCracken County: Doves: September 1 through October 14.

(3) Central Kentucky Wildlife Management Area, located in Madison County:

(a) Doves: September 1 through October 14.

(b) Woodcock and snipe: Seasons closed.

(4) Curtis Gates Lloyd Wildlife Management Area, located in Grant County: Doves: September 1 through October 15.

(5) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties:

(a) Doves: September 1 through September 30; December 9 through December 17.

(b) Woodcock and Snipe: December 9 through December 17.

Section 7. Closing of Certain Wildlife Management Areas to all Hunting. The following areas are closed to all hunting:

(1) Grayson Wildlife Management Area located in Carter and Elliott Counties.

(2) Beaver Creek Wildlife Management Area, including all private inholdings, located in Pulaski and McCreary Counties.

(3) Robinson Forest Wildlife Management Area, located in Breathitt, Perry and Knott Counties.

(4) Redbird Wildlife Management Area, including all private inholdings, located in Leslie and Clay Counties.

(5) Dewey Lake Wildlife Management Area, located in Floyd County.

(6) Cane Creek Wildlife Management Area, including all private inholdings, located in Laurel County.

CARL E. KAYS, Commissioner

DR. JAMES C. SALATO, Chairman

ADOPTED: March 6, 1978

APPROVED: WILLIAM L. SHORT, Secretary

RECEIVED BY LRC: August 21, 1978 at 8 a.m.

Amended Regulations Now In Effect

SECRETARY OF THE CABINET Department of Revenue As Amended

103 KAR 1:020. Wastewater revolving fund payments.

RELATES TO: KRS 76.005 to 76.420, 107.600, 107.610

PURSUANT TO: KRS 13.082, *Executive Order 78-835*

NECESSITY AND FUNCTION: This regulation outlines the procedure for approving payments of funds to metropolitan sewer districts from the "Kentucky Wastewater Revolving Fund" for assessments against *single-family tracts, agricultural land and undeveloped land* [property] for the cost of wastewater collection projects; the documents required before approval of payment of funds; the responsibilities of the sewer districts and the obligations of the owners of benefited property for whom payments are made.

Section 1. Before beginning construction on an assessable project under either KRS Chapter 76 or Chapter 107, a metropolitan sewer district shall determine the approximate amount of the assessments to be levied against undeveloped properties, based on either actual construction bids or engineering estimates, and notify the Kentucky Department of Revenue.

Section 2. Within thirty (30) days of the receipt of the approximate assessable amounts, the Kentucky Department of Revenue shall certify to the metropolitan sewer district as to whether or not the funds are or will be available in the fund for payment of deferred assessments for *single-family tracts, agricultural land and undeveloped land*. [properties.]

Section 3. If a metropolitan sewer district is advised that the funds are or will be available, it will notify each owner of *single-family tracts, agricultural land and undeveloped land* [property] benefited by the project that the owner may apply for and receive assistance from the fund. The district shall advise the owner of the estimated assessment which will be levied against his property, and shall furnish the owner with an application/agreement form, supplied by the Kentucky Department of Revenue, containing, but not limited to, the following information:

(1) A lien superior to all liens except the liens for state, county, city, school and road taxes and liens prior in time for other public improvements shall exist against the property until paid in full, including interest and penalties, if any.

(2) Interest shall accrue against the deferred assessment from the date of the apportionment warrant at the rate of *six percent (6%)* [eight percent (8%)] per annum, compounded annually, until paid in full.

(3) The deferred assessment plus accrued interest must be paid by the owner within thirty (30) days following the start of development of the property or at the time the property is sold or transferred. If the owner fails to pay the amount due the Kentucky Wastewater Revolving Fund under the aforesaid conditions, a ten percent (10%) penal-

ty, applied to the deferred assessment plus accrued interest, shall be added thereto, and the interest shall continue to accrue against the total sum until paid in full.

(4) The metropolitan sewer district shall enforce the collection of delinquent deferred assessments plus accrued interest and penalties, if any, upon instructions from the Kentucky Department of Revenue. Enforcement may include foreclosure by public sale of the property.

(5) At any time, the lien against the property may be removed by payment of all sums due the Kentucky Wastewater Revolving Fund as determined by the Kentucky Department of Revenue pursuant to the application/agreement.

Section 4. The owner may apply for and receive assistance from the Kentucky Wastewater Revolving Fund by completing and executing the application/agreement and returning it to the metropolitan sewer district within thirty (30) days.

Section 5. At the end of the thirty (30) day application period, the metropolitan sewer district shall forward all applications to the Kentucky Department of Revenue.

Section 6. When the actual amount of the assessments are determined and levied by a metropolitan sewer district pursuant to KRS Chapter 76 or Chapter 107, the district will notify the Kentucky Department of Revenue and each affected property owner of the actual assessment levied against each [undeveloped] property for which application was received. The owner will be advised that his or her assessment will be paid by the Kentucky Wastewater Revolving Fund pursuant to the application/agreement.

Section 7. The Department of Revenue shall prepare the necessary expenditure disbursement documents and forward to the Executive Department for Finance and Administration for transfer of funds from the capital construction account to the Kentucky Wastewater Revolving Fund and for payment to the metropolitan sewer district of deferred assessments on behalf of qualifying property owners. Upon receipt of payment, the metropolitan sewer district shall issue an apportionment warrant for each of the deferred assessments to the Department of Revenue.

Section 8. Whenever a deferred assessment is fully paid into the Kentucky Wastewater Revolving Fund by the property owner, the apportionment warrant shall be noted "paid in full" with the authorizing signature of an official of the Kentucky Department of Revenue. The warrant shall be sent to the metropolitan sewer district, and the lien shall be released by the metropolitan sewer district.

**SECRETARY OF CABINET
Kentucky Retirement Systems
As Amended**

105 KAR 1:060. Hospital and medical insurance.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.702, 78.510 to 78.852

PURSUANT TO: KRS 13.082, 16.640, 61.645, 61.701, 61.702, 78.780

NECESSITY AND FUNCTION: KRS 61.701 and 61.702 was enacted by the 1978 General Assembly to provide hospital and medical insurance for recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member.

Section 1. Funding of the insurance program will be achieved by transferring the following portion of the employer rate to the Kentucky Retirement System Insurance Fund.

Non-Hazardous		Hazardous		
KERS	CERS	SPRS	KERS	CERS
.48%	.46%	.30%	.52%	.52%

Section 2. Procedural Matters. Upon death, disability or service retirement the following procedures shall be followed to determine the amount to be paid from the Kentucky Retirement System Insurance Fund on behalf of the retired member:

(1) The percentage payable will be based on service of the member. Service credit will be combined from KERS, CERS and SPRS for determining the percentage payable by the Kentucky Retirement System Insurance Fund at the time of initial coverage. The percentage will be reduced at the expiration of period certain payments. Service relative to remaining retirement allowance will be used to determine new percentage. Premium payments will be provided for State Police or Hazardous Duty employees disabled in the line of duty as if they had twenty (20) years of service credit. Premium payments shall be made by the fund for members only and paid in accordance with the following schedule:

Years of Service	Percent of Payment	Payroll Deduction
20	100%	0%
15	75%	25%
10	50%	50%
4	25%	75%

(2) Group coverage for persons age sixty-five (65) or over will consist of Blue Cross-Blue Shield, High Option Medicare Supplement with a premium rate of fourteen dollars (\$14) per month, or persons age sixty-five (65) or over may select the Medicare Supplement with a premium rate of eight dollars and seventy cents (\$8.70) per month.

(3) Group coverage for persons less than age sixty-five (65) will consist of Blue Cross-Blue Shield single coverage with a premium rate of twenty-five dollars and fifty cents (\$25.50) per month.

(4) Spouse, dependents or beneficiaries [or dependents] may be insured by the member with group coverage as defined in subsections (2) and (3) above or a family coverage with a premium rate of seventy dollars (\$70) per month by authorizing deduction of the full premium amount from his (the member's) retirement allowance.

(5) Spouse, dependents or beneficiaries receiving a

retirement allowance may obtain group coverage as referenced in subsection (4) above by authorizing deduction of the full premium amount from his retirement allowance.

(6) All premium payments due from other than the Kentucky Retirement System Insurance Fund must be paid through deductions from recipient's retirement payment.

(7) Claim experience will be evaluated annually by Blue Cross-Blue Shield of Kentucky and rates may be changed based on experience.

**EXECUTIVE DEPARTMENT FOR FINANCE
AND ADMINISTRATION
State Board of Medical Licensure
As Amended**

201 KAR 9:111. Application, certification requirements.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)

PURSUANT TO: KRS 13.082, 311.654

NECESSITY AND FUNCTION: KRS 311.654 directs the State Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to establish requirements for applicants; requirements and exemptions for certification of paramedics; prohibitions relating to the use of paramedics; and to define inactive service of paramedics.

Section 1. Requirements for Applicants, Selection of Applicants, and Training. No paramedic training course shall be authorized or approved by the board that does not conform with the standards set forth in this regulation for requirements for applicants, selection of applicants, and training course requirements, except that any paramedic training course that began prior to the effective date of this regulation and otherwise conforms with the standards for training course requirements set forth in this regulation may be approved by the board.

Section 2. Requirements for Applicants. Each applicant shall:

- (1) Be eighteen (18) years of age or older.
- (2) Hold a valid motor vehicle operator's license.
- (3) Be of good moral character.
- (4) Not be habitually addicted to or an abuser of alcoholic beverages, drugs, or controlled substances.
- (5) Understand and be able to read, speak, and write the English language.
- (6) Have a physical examination performed by a physician licensed in this state within the twelve (12) months immediately preceeding the date of application verifying that the applicant is in good physical [and mental] health and has no disabilities that would prevent the applicant from functioning as a paramedic, which shall include a chest x-ray or tuberculin test.
- (7) Be currently certified by the Kentucky Department for Human Resources as an emergency medical technician, emergency medical technician-ambulance, emergency medical technician-instructor, or emergency medical technician instructor-trainer.
- (8) Have a high school diploma or general equivalency diploma.
- (9) Submit a notarized application form provided by the board to the board and to the medical advisor.

Section 3. Selection Committee. Each medical advisor shall appoint a selection committee to administer tests and to conduct interviews for the purpose of qualifying applicants to be accepted into paramedic training courses.

Section 4. Prohibition or Usage of Unauthorized Person. No provider shall employ, utilize, permit the operation of, or advertise or represent that said provider employs or utilizes certified paramedics, graduate paramedics, or paramedic trainees personnel unless provider is in compliance with the provisions of this regulation.

Section 5. Prohibited Utilization of Certified Paramedics. Nothing in this regulation shall be construed to permit certification or utilization of any certified paramedic, graduate paramedic, or paramedic trainee for the purpose of such individual working full-time with primary responsibility and duties limited to hospitals, physician's offices, clinics, or other definitive care facilities.

Section 6. Inactive Status of Certified Paramedics. In the event a certified paramedic discontinues his employment with a provider or with a training institution, he shall be deemed to be in inactive status and shall not perform the services of a certified paramedic unless subsequently employed by a new provider or training institution. Upon re-employment by a new provider, the certified paramedic shall immediately notify the board of the name and address of his new provider or training institution.

EXECUTIVE DEPARTMENT FOR FINANCE
AND ADMINISTRATION
State Board of Medical Licensure
As Amended

201 KAR 9:151. Contracts for support services.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)

PURSUANT TO: KRS 13.082, 311.654, 311.656

NECESSITY AND FUNCTION: KRS 311.654 directs the State Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to authorize contracts for support services; establish a fee schedule; and to establish a Paramedic Advisory Committee *subject to the approval of the board*.

Section 1. Contract for Support Services. The board may contract with the Department for Human Resources for the selection of training sites, student selection, monitoring and evaluation of training courses of paramedics, and to perform such other services as may be necessary to implement the provisions of these regulations.

Section 2. Fees. The following schedule of fees is established pursuant to KRS 311.656:

- (1) Application Fee: \$10;
- (2) Examination Fee: \$35;
- (3) Renewal Fee: \$20;
- (4) Fee for Duplicate Certificate: \$10.

Section 3. Advisory Committee. (1) There is hereby created a Paramedic Advisory Committee consisting of the following:

(a) Four (4) physicians, two (2) of them shall be appointed for a term of three (3) years, one (1) for a term of two (2) years, and one (1) for a term of one (1) year.

(b) Two (2) emergency department nurses, one (1) of whom shall be appointed for a term of three (3) years, and one (1) for a term of two (2) years.

(c) One (1) certified paramedic, who shall be appointed for a term of one (1) year.

(d) One (1) EMT instructor, who shall be appointed for a term of three (3) years.

(e) One (1) member of the Emergency Medical Services Coordination Association, who shall be appointed for a term of two (2) years.

(f) One (1) advanced life support provider, who shall be appointed for a term of one (1) year.

(g) One (1) consumer, who shall be appointed for a term of one (1) year.

(h) The manager of the EMS Branch of the Department for Human Resources or his designee shall serve as an ex-officio member.

(2) The duties of the committee shall be to advise the board on matters pertaining to paramedics.

Proposed Amendments

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 4:010. Board meetings.

RELATES TO: KRS 164.746(5)

PURSUANT TO: KRS 13.082, [164.748(6)] 164.746(6)

NECESSITY AND FUNCTION: To provide for the holding of regular quarterly meetings and special meetings of the Authority Board.

Section 1. Regular Quarterly Meetings. The board shall hold regular quarterly meetings the second Thursday of January, April, July and October. The time and location of each meeting shall be transmitted, with the approval of the chairman, by the executive director to each board member and to other individuals, agencies and organizations in accordance with the provisions of KRS Chapter 61 at least ten (10) days in advance of the meeting date.

Section 2. Special Meetings. The chairman may call special meetings for the transaction of any business of the board. The date, time and place of any special meeting shall be transmitted by the executive director to each board member and to other individuals, agencies and organizations in accordance with KRS Chapter 61 at least ten (10) days in advance of the meeting date. A special meeting, if held within sixty (60) days immediately preceding the next scheduled regular quarterly meeting, may, unless objected to by one or more board members, be substituted for the next scheduled regular quarterly board meeting.

PAUL P. BORDEN, Executive Director

ADOPTED: August 23, 1978

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: The Executive Director, Kentucky Higher Education
Assistance Authority, 691 Teton Trail, Frankfort, Ken-
tucky 40601.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 4:020. *Disapproval* [Denial], probation, *limitation*, suspension or *termination* [revocation] of [institution] eligibility to participate in authority programs.

RELATES TO: KRS 164.748(13) [40 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] post-secondary institutions. This regulation sets forth the *conditions and procedures under* [manner in] which the authority or its delegated officers may *disapprove*, [deny] probate, *limit*, suspend or *terminate*

[revoke] the *eligibility of educational institutions, eligible institutions, or eligible lenders* [authority's Declaration of Institutional Eligibility] to participate in any of the student financial assistance programs administered by the authority.

Section 1. *Disapproval* [Denial]. The authority or any of its delegated officers may, upon verification of misstatements of fact, *financial instability or failure to meet eligibility requirements under applicable law or regulations*, related to an *application* [institution's certification and declaration] to participate in an authority administered program, *disapprove such application* [refuse to execute a declaration of eligibility for such institution].

Section 2. Probation. The authority or any of its delegated officers may, upon documentation that a *participant* [such institution] has failed through acts of commission or omission to *properly administer any program for which the institution has previously been approved, place the participant on probation* [abide by the regulations pertaining to any authority administered program for which the institution has previously been issued a declaration of eligibility to participate, probate an institution's eligibility to participate in authority administered programs] for a period not to exceed *six (6) months* [one (1) year].

Section 3. *Limitation*. The authority or any of its delegated officers may, upon documentation that a *participant* in any authority administered program has failed through acts of commission or omission to *abide by the regulations pertaining to any authority administered program for which the participant has previously been approved, place limits on the participant's eligibility to participate in authority administered programs* for a period not to exceed *one (1) year*.

Section 4 [3]. Suspension. The authority or any of its delegated officers may, upon documentation that *the participant* [such institution] has failed through acts of commission or omission to *abide by the regulations pertaining to any authority administered program for which the participant [institution] has previously been issued approval* [a declaration of eligibility to participate], *suspend the participant's* [an institution's] eligibility to participate in authority administered programs for a period not to exceed *one (1) year*.

Section 5 [4]. *Termination* [Revocation]. The authority or any of its delegated officers may, following any period of probation, *limitation* or suspension [of an institution's eligibility to participate in any authority administered program,] in the absence of [institutional] correction of deficiencies which resulted in the *adverse action, terminate a participant's* [probation or suspension revoke an institution's] eligibility to participate in all or any of the authority administered programs. *Participants* [Institutions] which have their eligibility *terminated* [revoked] may not submit a new *application for approval* [agreement form] to the authority prior to the expiration of one (1) calendar year immediately following the date of *termination* [eligibility revocation].

Section 6 [5]. Notices. In the event eligibility of any *applicant or participant* [institution] is *disapproved* [denied], probated, *limited*, suspended or *terminated* [revoked] by act of an officer of the authority, the *applicant or participant* [institution] shall be provided with notice of such action which shall be issued in the name of the officer and shall contain a concise statement of the reason for the *disapproval* [denial], probation, *limitation*, suspension or *termination* [revocation] of eligibility and sufficient information to reasonably apprise the *applicant or participant* [institution] of the [their] right to appeal to the authority for a hearing on all issues contained therein. All requests for hearings must be made to the authority at [120 Mero Street,] Frankfort, Kentucky 40601, within twenty (20) days of receipt of the notice. Such notices or appeals may be effected in the manner prescribed by law for the service of civil process or by the officer forwarding same to the *applicant or participant* [institution] or by the *applicant or participant* [institution] forwarding same to the authority by U.S. registered mail or certified mail, postage prepaid, to the address of the *applicant or participant* [institution] as reflected by the records of the authority or to the authority at [120 Mero Street,] Frankfort, Kentucky 40601.

Section 7 [6]. Hearings. In the event *disapproval* [denial], probation, *limitation*, suspension or *termination* [revocation] of eligibility results from the action[s] of a delegated officer of the authority, the *applicant or participant* [institution] may appeal to the full authority for a hearing to determine the facts in the case. At such hearing the officer or officers of the *applicant or participant* [college] may be accompanied by counsel of their own choosing and at their own expense. [If the findings warrant, the authority may uphold the findings of its officer or may find in favor of the institution.] The hearing may be conducted by [the authority board or by] a hearing officer or a hearing committee appointed by the [authority] board. All members of the authority and all persons appointed by the board [authority] as hearing officers or as members of a hearing committee are authorized to administer oaths, issue subpoenas for the attendance of witnesses and for the production of books, papers and documents and to cite for contempt before the [circuit or quarterly] court *having jurisdiction* in the county in which the hearing is held for disobedience of its process or for contumacious or disrespectful conduct. The *applicant or participant* [institution] proceeded against shall be entitled to be represented at the hearing in person or by counsel or both and shall be entitled to introduce testimony by witnesses or, if the authority so permits, by depositions. Hearing officers and hearing committees shall prepare a proposed findings of fact and conclusions of law and *present recommendations to a committee of the board*. *If the findings warrant, the committee of the board may uphold the findings of the officer of the authority or may find in favor of the participant.*

Section 8 [7]. Decisions and Appeals. All *initial* decisions *disapproving* [denying], probating, *limiting*, suspending or *terminating* [revoking institutional] eligibility may be made by an officer of the authority and shall be binding upon the authority and the *applicant or participant* [institution] in the absence of an appeal by the *applicant or participant* [institution] to the [full] authority. In the event the *applicant or authority does not petition the board for a hearing*, [an appeal is made by an institution to the full authority] the decision resulting from a hearing conducted

by the authority shall become final and conclusive *twenty* (20) [thirty (30)] days after notice thereof is given as provided.

PAUL P. BORDEN, Executive Director

ADOPTED: August 23, 1978

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: The Executive Director, Kentucky Higher Education
Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET Department of Revenue (Proposed Amendment)

103 KAR 16:080. Apportionment; property factor.

RELATES TO: KRS 141.120

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 141.120(8) requires that all business income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three (3). This regulation provides detailed guidelines for determining the property factor of a multi-state corporation.

Section 1. General. The property factor includes all real and tangible personal property owned or rented and used during the taxable year to produce business income, except pollution control property located in Kentucky for which a tax exemption certificate is issued by the *Department of Revenue* (formerly by the Department for Natural Resources and Environmental Protection) [(1974 Amendment to KRS 141.120 effective for taxable years after June 21, 1974)]. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment and other real and tangible personal property used in the production of business income but does not include coin or currency. Property used in production of nonbusiness income which is directly allocated shall be excluded from the factor. Property used in both the production of business and non-business income shall be included in the factor only to the extent the property was used in connection with the production of business income. The method of determining the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includible in the factor.

Section 2. Property Used for Business Income. (1) Property shall be included in the property factor if it is actually used or is available for or capable of being used during the taxable year for the production of business income. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are included in the factor. Property or equipment under construction during the income year (except inventoriable goods in process) shall be excluded from the factor until it is actually used

for the production of business income. If the property is partially used for the production of business income while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the production of business income shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale or conversion to the production of nonbusiness income;

(a) Example: On June 30, 1975 [1968], the corporation closed its manufacturing plant in State X and held it for sale. The property remained vacant until its sale on October 29, 1976 [31, 1969]. The value of the manufacturing plant is included in the property factor until November 1, 1976 [1969].

(b) Example: Same as above except that the property was rented until it was sold. The rental income is business income and the plant is included in the property factor until November 1, 1976 [1969].

(c) Example: On June 30, 1975 [1968], the corporation closed its manufacturing plant and leased the building under a five year lease on October 1, 1975 [1968]. The plant is included in the property factor until October 1, 1975 [1968].

(d) Example: The corporation operates a chain of retail grocery stores. On June 30, 1975 [1968], the corporation closes Store A. It is then remodeled into three (3) small retail stores such as a dress shop, dry cleaning, and barber shop, which are leased on November 3, 1975 [1, 1968]. The property is removed from the property factor on July 1, 1975 [1968].

(2) In Example (a), the plant was sold shortly after it was put up for sale. Cases will vary as to the lapse of time until there is a sale. If a closed plant remains unsold for five (5) years after it is put up for sale, it is removed from the property factor.

Section 3. Consistency in Reporting. The corporation shall be consistent in the valuation of property and in excluding or including property in the property factor in filing returns or reports in all states. In the event the corporation is not consistent in its reporting, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

Section 4. Property Factor: Numerator. (1) The numerator of the property factor shall include the average value of the corporation's real and tangible personal property owned or rented and used in Kentucky during the taxable year for the production of business income.

(2) Property in transit between locations of the corporation to which it belongs shall be considered at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a corporation in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination.

(3) The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without Kentucky during the taxable year shall be determined, for purposes of the numerator of the factor, on the basis of total time within the state during the taxable year. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Section 5. Valuation of Owned Property. (1) Property owned by the corporation shall be valued at original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the corporation and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

(a) Example: On January 1, 1966 [1960], corporation acquired a factory building in Kentucky at a cost of \$500,000 and on July 1, 1968 [1961], expended \$100,000 for major remodeling of the building. It files its return for 1975 [1968] on the calendar year basis. Depreciation deduction of \$22,000 was claimed on the building for its return for 1975 [1968]. The value of the building includible in the numerator and denominator of the property factor is \$600,000 as the depreciation deduction is not taken into account in determining the value of the building.

(b) Example: In 1977 [1970], X corporation merges into Y corporation in a taxfree reorganization under the Internal Revenue Code. At the time of the merger, X owns a factory which X built in 1972 [1965] at a cost of \$1,000,000. X has been depreciating the factory at a rate of two percent (2%) per year, and its basis in X's hands at the time of the merger is \$900,000. Since the property is acquired by Y in a transaction in which, under the Internal Revenue Code, its basis in Y's hands is the same as its basis in X's hands, Y includes the property in Y's property factor at X's original cost, without adjustment for depreciation, i.e., \$1,000,000.

(c) Example: Corporation Y acquires the assets of corporation X in a liquidation by which Y is entitled to use its stock cost as the basis of the X assets under Section 334(b) (2) of the 1954 Internal Revenue Code (i.e., stock possessing eighty percent (80%) control is purchased and liquidated within two (2) years). Under these circumstances, Y's cost of the assets is the purchase price of the X stock, prorated over the X assets.

(2) If original cost of property is unascertainable, nominal, or zero, the property is included in the factor at its fair market value at the date of acquisition by the corporation.

(3) Inventory of stock of goods shall be included in the factor by valuation method used for federal income tax purposes.

(4) Property acquired by gift or inheritance shall be included in the factor at its basis for depreciation for federal income tax purposes.

Section 6. Rented Property.

(1) (a) Property rented by a corporation is valued at eight (8) times the net annual rental rate. The net annual rental rate is the total annual rental paid, less total annual rental received from subrentals. In exceptional cases this may result in a negative value or a clearly inaccurate valuation. In those instances any other method which will properly reflect the value may be required by the department or may be requested by the corporation, but in no case shall the net annual rental rate be less than an amount which bears the same ratio to the total annual rental rate paid by the taxpayer as the rental property used by the corporation bears to all the rental property:

(b) Example: The corporation rents a 10-story building at an annual rental rate of \$1,000,000. It occupies two (2) stories and sublets eight (8) stories for \$1,000,000 a year. The net annual rental rate must not be less than two-tenths of the annual rental rate for the entire year or \$200,000.

Wildlife Management Area, Peal Wildlife Management Area and commercial waterfowl shooting areas in a portion of Ballard County. This regulation is necessary for the continued protection and conservation of migratory waterfowl and to insure a permanent and continued supply of this wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory waterfowl within reasonable limits based upon an adequate supply and to insure some uniformity of commercial waterfowl shooting area operating and reporting procedures. It is [has become] necessary to amend this regulation *because of a change in the number of persons permitted to occupy a pit or blind and the size of shot allowed* [in order to apply the pit or blind setback provision equally and fairly to private property and commercial waterfowl shooting areas and to further regulate harvest].

Section 1. It is unlawful for any person or persons to establish or use any commercial blind or pit for the purpose of taking waterfowl on commercial waterfowl shooting areas, the Ballard Wildlife Management Area and the Peal Wildlife Management Area within the area described herein, unless they conform with this regulation, except for the exemptions listed. A commercial waterfowl shooting area is any area of land and/or water, used in whole or in part for the taking, attempted taking, or the privilege of taking migratory waterfowl where a daily monetary charge is made. This regulation deals with commercial waterfowl hunting; non-commercial hunting is covered by another regulation.

Section 2. Designated Area Covered By This Regulation. This regulation applies only to the area described as follows: starting at the northwest city limits of the town of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U. S. Highway 60 at LaCenter; thence following U. S. 60 southwest to the northeast city limits of Wickliffe.

Section 3. Required Permit. A commercial waterfowl permit issued by the Department of Fish and Wildlife Resources, [Capital Plaza Tower,] Frankfort, Kentucky 40601, must be obtained by any person or persons operating a commercial waterfowl shooting area as defined in Section 1. Any person or persons operating more than one commercial waterfowl shooting area must obtain a permit for each individual area. A land holding divided by a public road may be operated as a commercial waterfowl shooting area under one permit. Whenever a farm unit is divided by land owned by others, a separate permit is required for each tract of land operated as a commercial waterfowl shooting area. An annual fee [of twenty-five dollars (\$25)] will be charged for each commercial waterfowl permit.

Section 4. Record Keeping, Reporting and Violations. The holder of a commercial waterfowl permit shall:

(1) Maintain and keep an accurate and complete daily hunter register and waterfowl kill record in duplicate on the hunting area on forms provided by the Department. The original copy of said forms for the period Monday through Sunday must be mailed or taken to the Ballard

Wildlife Management Area, Route # 1, LaCenter, Kentucky 42056, at the close of shooting hours each Sunday during the waterfowl season, and must be postmarked no later than the following Monday or the day following the last day of the waterfowl season. Duplicate copies of these forms must be held at the place of registration. This daily register and kill record shall be exhibited to, and open to inspection by conservation officers and other authorized employees of the Department of Fish and Wildlife Resources and the U. S. Fish and Wildlife Service.

(2) Be responsible for any violation pertaining to his permit, or any type of violation being committed on his premises that is under the permit, unless he reports immediately the violation to a conservation officer.

Section 5. Rules of Compliance for Commercial Waterfowl Shooting Areas.

(1) It is unlawful for any person or persons to shoot, take, or attempt to take, any waterfowl except from a blind or pit (see Section 10 for exemptions).

(2) It is unlawful for any person or persons to establish or use any blind or pit for the taking of waterfowl within 100 yards of any other blind or pit.

(3) It is unlawful for any person or persons with commercial intentions to establish or locate any blind or pit within 200 yards of any state waterfowl refuge, or within 100 yards of any state-owned public shooting area or within fifty (50) yards of any property line. Blinds or pits on state property shall conform to boundary regulations.

(4) It is unlawful for more than five (5) [four (4)] persons, each having one shotgun [, plus one (1) caller who shall not shoot,] to occupy a single blind or pit at the same time.

(5) No waterfowl hunting will be permitted along or on the Ohio River from a point 100 yards upstream from Dam 53, downstream to a point 100 yards below the downstream boundary of the Ballard County Wildlife Management Area (the downstream boundary being approximately one and one-half (1½) miles below the mouth of Humphrey Creek). Waterfowl hunting is allowed on or along the remainder of the Ohio and Mississippi Rivers as described in Section 2.

(6) No person or persons shall hunt, in any manner, or carry a gun on any licensed commercial waterfowl shooting area without first registering and checking in with the owner, operator or keeper of the shooting area.

(7) No shot larger than BBs [No. 2 (# 2)] may be used or possessed [will be allowed] for hunting waterfowl. This rule applies statewide; including all of the department's wildlife management areas.

Section 6. Marking of Harvested Waterfowl. All persons engaged in any type of commercial enterprise where waterfowl, or other game must be harbored, or stored for a period of time, or temporarily, must identify each bird with a tag, giving the name and address of the owner and his license number.

Section 7. Revocation of Permit. Failure to comply with any part of this regulation shall constitute a violation by the holder of a commercial waterfowl permit, and shall constitute grounds for the revocation of his or her permit.

Section 8. Rules Applying Only to the Ballard Wildlife Management Area located in Ballard County.

(1) Not more than three (3) persons are allowed to occupy a single blind or pit at the same time.

(2) Both [Only] geese and ducks may be taken by hunters

occupying a blind or pit in areas designated for goose hunting. [Shooting, taking or attempting to take ducks from a pit or blind in designated goose hunting areas, will constitute a violation of this regulation.]

(3) Only ducks may be taken by hunters occupying a blind or pit in areas designated for duck hunting. Shooting, taking, or attempting to take geese from a pit or blind in designated duck hunting areas, will constitute a violation of this regulation.

(4) No shot larger than BBs [No. 2 (# 2)] *may be used or possessed* [will be allowed] for hunting waterfowl.

Section 9. Rules Applying Only to the Peal Wildlife Management Area Located Near Wickliffe in Ballard County.

(1) Not more than three (3) persons are allowed to occupy a single blind or pit at the same time.

(2) Both ducks and geese may be taken by hunters occupying a pit or blind.

(3) Hunters may erect only temporary pits or blinds as long as they comply with the setback provisions and distances between blinds as provided in Section 5, subsection (2), of this regulation.

(4) Any hunter may occupy a privately erected temporary, or state erected permanent blind or pit on a first come, first serve basis.

(5) No shot larger than BBs [No. 2 (# 2)] *may be used or possessed* [will be allowed] for hunting waterfowl.

Section 10. Conditions and Locations Where Boat is Considered a Blind. For purposes of this regulation, an anchored, stationary or drifting boat from which waterfowl are hunted, is considered to be a blind except for the area closed to waterfowl hunting as described in Section 5, subsection (5).

MIKE BOATWRIGHT, Chairman

Department of Fish and Wildlife Resources Commission

CARL E. KAYS, Commissioner

ADOPTED: August 28, 1978

APPROVED: WILLIAM L. SHORT, Secretary

RECEIVED BY LRC: September 14, 1978 at 9:45 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for 10 a.m. EDT October 10, 1978, in the first floor auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. For additional information or submission of written comments, contact Carl E. Kays, Commissioner, Department of Fish and Wildlife Resources, 592 East Main Street, Frankfort, Kentucky 40601.

CABINET FOR DEVELOPMENT

Department of Fish and Wildlife Resources
(Proposed Amendment)

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 on and after January 1, 1979. See also 301 KAR 3:020)

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 license:

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: \$5.50 [18.50]

Commercial fishing gear tag (nonresident) blocks 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

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

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: \$2.00 [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.

MIKE BOATWRIGHT, Chairman
Fish and Wildlife Resources Commission
CARL E. KAYS, Commissioner

ADOPTED: August 28, 1978

APPROVED: September 12, 1978

RECEIVED BY LRC: September 14, 1978 at 9:45 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: The Commissioner, Department of Fish and Wildlife Resources, 592 East Main Street, Frankfort, Kentucky 40601.

CABINET FOR DEVELOPMENT
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 3:070. Goose harvest reporting.

RELATES TO: KRS 150.025, 150.600

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: This regulation pertains to the rules, registration and reporting of the goose harvest in a designated portion of Ballard County. This regulation is necessary to determine the number of geese harvested in Ballard County as mandated by the Mississippi Flyway Council. The harvest data are to be utilized in determining the size of a future goose harvest quota. The function of this regulation is to provide accurate goose harvest data to serve as a basis for a [forthcoming] mandatory harvest quota. *This amendment is necessary because of a change in the number of persons permitted to occupy a pit or blind.*

Section 1. It is unlawful for any person or persons to shoot, take, or attempt to take any waterfowl on non-

commercial lands and/or waters within the area described herein, unless they conform with this regulation. A non-commercial waterfowl shooting area is any area or land and/or water, used in whole or in part for the taking, attempted taking, or the privilege of taking migratory waterfowl where no daily monetary charge is made.

Section 2. Designated Area Covered By This Regulation. This regulation applies only to the area described as follows: starting at the northwest city limits of the town of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U. S. Highway 60 at LaCenter; thence following U. S. 60 southwest to the northeast city limits of Wickliffe.

Section 3. General Rules Concerning Waterfowl Hunting and Spacing of Pits or Blinds on Non-commercial Waterfowl Shooting Areas.

(1) It is unlawful for any person or persons to shoot, take, or attempt to take, any waterfowl except from a blind or pit. For purposes of this regulation, an anchored, stationary or drifting boat from which waterfowl are hunted, is considered to be a blind, except for the area closed to waterfowl hunting as described in subsection (5) of this section.

(2) It is unlawful for any person or persons to establish or use any blind or pit for the taking of waterfowl within 100 yards of any other blind or pit.

(3) It is unlawful for any person to establish or locate any blind or pit within 200 yards of any state waterfowl refuge, or within 100 yards of any state owned public shooting area or within fifty (50) yards of any property line.

(4) It is unlawful for more than five (5) [four (4)] persons, each having one shotgun [, plus one caller who shall not shoot,] to occupy a single blind or pit at the same time.

(5) No waterfowl hunting will be permitted along or on the Ohio River from a point 100 yards upstream from Dam 53, downstream to a point 100 yards below the downstream boundary of the Ballard County Wildlife Management Area (the downstream boundary being approximately one and one-half (1½) miles below the mouth of Humphrey Creek). Waterfowl hunting is allowed on or along the remainder of the Ohio and Mississippi Rivers as described in Section 2 of this regulation.

Section 4. Free Permit and Rules for Persons Controlling Land and/or Water, and/or Waterfowl Hunting Rights and Privileges Pertaining to Said Land and/or Water Used, or Intended to be Used for Hunting Geese on a Non-commercial Basis.

(1) Any person or persons controlling land and/or water and/or the waterfowl hunting rights and privileges pertaining to said land and/or water, within the designated area covered by this regulation, used or intended to be used, in whole or in part, for the taking of geese on a non-commercial basis must apply to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, for a free Migratory Goose Hunting Area permit.

(2) The holder of a free Migratory Goose Hunting Area permit may be:

(a) The landowner, his tenant or any designated representative, who controls the land and/or water and/or

the waterfowl hunting rights and privileges pertaining to said land and/or water upon which goose hunting is permitted;

(b) Any other person to whom individuals as defined in paragraph (a) of this subsection, have assigned exclusive goose hunting rights or privileges, in writing, on forms provided by the department.

(3) The free Migratory Goose Hunting Area permit shall:

(a) Be displayed openly on the property for which it was issued;

(b) Be open for inspection by conservation officers or other authorized employees of the Department of Fish and Wildlife Resources and members of the U. S. Fish and Wildlife Service;

(c) Expire each year on the day after the end of the waterfowl season.

(4) The holder of a free Migratory Goose Hunting Area permit shall:

(a) Make available and maintain at all times during the waterfowl season, the daily hunter register forms in duplicate provided by the department on the area for which the permit is issued;

(b) Require all waterfowl hunters to register each time they hunt on the daily register forms provided by the department prior to hunting on any permit area;

(c) Require all waterfowl hunters to record the number and kinds of geese taken on the permit area immediately before leaving the hunting area;

(d) Mail or take the original daily register form for the period Monday through Sunday to the Ballard Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, at the close of shooting hours each Sunday during the waterfowl season, and it must be postmarked no later than the following Monday or the day following the last day of the waterfowl season, even if no geese were killed or hunted;

(e) Hold duplicate forms from past weeks for a period of two (2) months after the end of the waterfowl season;

(f) Exhibit to, and allow inspection of, the daily register by conservation officers and other authorized employees of the Department of Fish and Wildlife Resources and the U. S. Fish and Wildlife Service.

Section 5. Any person hunting, taking or attempting to take geese within the area designated by this regulation shall:

(1) Write on a daily register form the date, and their name and address before entering any land and/or waters to hunt geese;

(2) Immediately upon returning from any land and/or waters, register the numbers and kinds of geese taken, including a negative or zero (0) report if failing to kill any geese.

Section 6. Ohio and Mississippi River Waterfowl Hunters. Persons hunting or taking geese on the Ohio and Mississippi Rivers and their overflow areas within the designated area covered by this regulation shall apply for a season's supply of daily register forms at the Ballard Wildlife Management Area, Route 1, LaCenter, Kentucky 42056.

(1) A daily register form must be carried on the person of each goose hunter if hunting alone, or by one hunter in a party while hunting, taking or attempting to take geese on these two rivers and their overflow areas. The form must be filled out during each hunt in the same manner as described in Section 5. When hunting in a party where only

one person possesses a daily register form, all members of the hunting party may register on that person's daily register.

(2) The original copy of the daily register form must be mailed or taken to the Ballard Wildlife Management Area as described in Section 4, subsection (4)(d).

(3) The duplicate daily register form must be held as described in Section 4, subsection (4)(e).

(4) The daily register form must be exhibited and allowed to be inspected as described in Section 4, subsection (4)(f).

MIKE BOATWRIGHT, Chairman

Department of Fish and Wildlife Resources Commission

CARL E. KAYS, Commissioner

ADOPTED: August 28, 1978

APPROVED: WILLIAM L. SHORT, Secretary

RECEIVED BY LRC: September 14, 1978 at 9:45 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation is scheduled for 10 a.m. EDT, October 10, 1978, in the first floor auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. For additional information or submission of written comments, contact Carl E. Kays, Commissioner, Department of Fish and Wildlife Resources, 592 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION

Bureau of Highways

(Proposed Amendment)

603 KAR 3:010. Advertising devices on interstates.

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 interstate highways.

Section 1. (1) Except as provided for 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 interstate 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 interstate 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. The following terms when used in this regulation shall have the following meanings:

(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 way of a non-divided highway.

(5) "Erect" means to construct, build, raise, assemble, place, affix, attach, 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) "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 interstate 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" also means all areas inside the boundaries of the Commonwealth which are within 660 feet of the edge of the right-of-way of an interstate highway in an adjoining state.

(9) "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.

(10) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(11) "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting legs of an interchange.

(12) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(13) "Permitted" as used in this regulation means to exist only by permit from the Department of Transportation, Bureau of Highways.

(14) "Allowed" as used in this regulation means to exist without a permit from the Department of Transportation, Bureau of Highways.

(15) "Commercial or industrial area" means:

(a) The land use for the area as of September 21, 1959, was clearly established by state law as industrial or commercial and is zoned commercial or industrial at the time of the application, or

(b) The land use for such area was within an incorporated municipality as such boundaries existed on

September 21, 1959, and is zoned for commercial or industrial use.

(16) "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.

(d) Activities conducted in a building principally used as a residence.

(e) Railroad tracks and minor sidings.

(f) The sale or leasing of property.

(17) "Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one 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.

(18) "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.

(19) "Activity boundary line" means regularly used buildings, parking lots, storage and process areas which are an integral part of and contiguous to the activity.

(20) "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.

(21) "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.

(22) "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.

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 illuminated by other than white lights.
- (f) 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.
- (g) Advertising devices which prevent the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.
- (h) Signs which contain, include, or are illuminated by any flashing, intermittent or moving lights, except those giving public service information of time, date, temperature or weather and limited to one (1) cycle of four (4) displays. They may contain no other message. The maximum time limit for the completion of the four display cycle shall be five (5) seconds. *Signs which have a continuous revolving or running message shall be limited to the same restrictions as to message content, limited to one (1) cycle and limited to a maximum of five (5) seconds for the completion of the one (1) cycle.*
- (i) 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 cause 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.
- (j) Advertising devices which move or have any animated or moving parts.
- (k) Advertising devices erected or maintained upon trees or painted or drawn upon rocks or other natural features.
- (l) Advertising devices exceeding 1,250 square feet in area, including border and trim, but excluding supports.
- (m) Advertising devices closer than fifty (50) feet to the edge of the main traveled way of any interstate highway.
- (2) An advertising device which is not visible from the main traveled way of the highway may be allowed in protected areas.
- (3) Any advertising device which is legible from the main traveled way of any interstate highway must have an approved permit from the Department of Transportation, Bureau of Highways, to be a legal advertising device.
- (4) 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 3:020.)
- (5) 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 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 [100 foot] spacing for billboard advertising device[s] structures as described in Section 5, subsection (4), shall be measured from the nearest point of [between] each [device] structure to the other.

Section 5. "Billboard" advertising device provisions.

(1) "Billboard" advertising devices may be constructed and maintained in protected areas which are zoned commercial or industrial as defined in Section 2, subsection (15), 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. 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 3, subsection (1).

(4) No "billboard" advertising device structure shall be erected within 500 [100] feet of any other such advertising device structure on the same side of the highway, unless separated by a building, natural obstruction or roadway in such manner that only one (1) sign located within the required spacing distance is visible from the highway at any one time. (See Measurement of spacing, Section 4, subsection (4).) This spacing shall not apply to on-premise advertising devices nor will on-premise advertising devices affect the spacing of other advertising structures. *Billboard structures in legal existence on the effective date of this amendment which are less than 500 feet from any other such advertising device structure on the same side of the highway, may continue to remain in place until they are destroyed, abandoned or discontinued as defined in this regulation, as long as only routine maintenance as described in Section 2, subsection (18), is performed on them.*

(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.

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 (16), 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) To qualify as an "on-premise" advertising device, the device must be within the property boundary lines of the advertised activity.

(3) 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).

(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: July 24, 1978

RECEIVED BY LRC: August 24, 1978 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Ed. W. Hancock, Deputy Secretary for Legal Affairs, Department of Transportation, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:020. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910, the Occupational Safety and Health Standards, published in the Federal Register, June 27, 1974 Edition, Volume 39, Number 125, Government Printing Office, Washington, D.C. 20402. These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

(1) 29 CFR Part 1910.1 shall read as follows:

"The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR Part 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR Part 1910.2 shall read as follows: As used in this part, unless the context clearly requires otherwise:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Commissioner of Labor, Commonwealth of Kentucky.

(c) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(d) "Employee" means any person employed except those employees excluded in KRS 338.021.

(e) "Standard" means a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."

(f) "National Consensus Standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Established Federal Standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(h) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601.

(3) 29 CFR 1910.13 through 1910.16 relating to ship repairing, shipbuilding, shipbreaking, and longshoring; and 1910.267a relating to pesticides, as well as paragraph (a)(6) in Section 1910.267 which refers to Section 1910.267a, are excluded and deleted in their entirety.

(4) 29 CFR 1910.141(c)(2)(i) shall read as follows:

"(i) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy."

(5) The changes which have been adopted by the U.S. Department of Labor relating to 29 CFR 1910.211, and 1910.217, mechanical power presses, and published in the Federal Register Volume 39, Number 233, December 3, 1974, a copy of which is attached hereto, are hereby adopted by reference.

(6) The changes and additions which have been adopted by the U.S. Department of Labor relating to Telecommunications which are contained in 29 CFR 1910.67, 1910.70, 1910.183, 1910.189, 1910.190, 1910.268, 1910.274, and 1910.275, published in the Federal Register, Volume 40, Number 59, March 26, 1975, a copy of which is attached hereto, are adopted by reference.

(7) 29 CFR 1910.93q, the Occupational Safety and Health Standard covering Vinyl Chloride which was published in the federal Register, Volume 39, Number 194, October 4, 1974, a copy of which is attached hereto, is hereby adopted by reference.

(8) 29 CFR 1910.106(d)(2)(iii) of the Federal Register, Volume 39, Number 125, June 27, 1974, shall be amended by adding Table H-12 of the Federal Register, Volume 40, Number 18, page 3982, January 27, 1975, a copy of which is attached hereto, is adopted by reference.

(9) 29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:

"(a) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health."

"(b) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and first-aid supplies approved by a consulting physician, along with a signed list of these supplies, shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who while performing their

duties, are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees."

"(c) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid. First-aid supplies approved by the consulting physician shall be readily available."

"(d) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use."

(10) Recodification of 29 CFR 1910.93 through 1910.93q as 1910.1000 through 1910.1017 respectively, as published in the Federal Register, Volume 40, Number 103, May 29, 1975, a copy of which is attached hereto, is hereby adopted by reference.

(11) 29 CFR 1910.141(d)(2)(i) of the Federal Register, Volume 40, Number 82, April 28, 1975, amended by deleting the last half of Table J-2, a copy of which is attached hereto, is hereby adopted by reference.

(12) The new standard, adopted by the U.S. Department of Labor relating to Industrial Slings contained in 29 CFR 1910.184, published in the Federal Register, Volume 40, Number 125, June 27, 1975, a copy of which is attached hereto, is hereby adopted by reference.

(13) 29 CFR 1910.94 which was amended by revoking paragraphs (b)(2)(i) and (b)(2)(ii) and by revising paragraph (b)(2), as published in the Federal Register, Volume 40, Number 111, June 9, 1975, a copy of which is attached hereto is adopted by reference.

(14) 29 CFR 1910.217(b)(7)(xii) relating to machines using part revolution clutches shall be amended by adding the following:

"This provision will not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the 'inch' position."

(15) 29 CFR 1910.94(d)(4)(i) Table G-14, Page 23594, published in the Federal Register, Volume 39, Number 125, Thursday, June 27, 1974, as adopted, contains a typographical error and is hereby revoked. The corrected version published in the Federal Register, Volume 37, No. 202, Wednesday, October 18, 1972, Table G-14, Page 22155, a copy of which is attached hereto, is hereby adopted by reference.

(16) 29 CFR 1910.1001(i)(1) which was revised by the U.S. Department of Labor, for retention of records of Asbestos Exposure Monitoring from three (3) years to twenty (20) years, as published in the Federal Register, Volume 41, No. 55, Friday, March 19, 1976, a copy of which is attached hereto, is hereby adopted by reference.

(17) 29 CFR 1910.184(f)(6) which was amended by the U.S. Department of Labor, to delete the paragraph which prohibits the use of knots or wire rope clips to form eyes in wire rope slings, as published in the Federal Register, Volume 41, No. 62, Tuesday, March 30, 1976, a copy of which is attached hereto is hereby adopted by reference.

(18) Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows:

"Premixed Solutions: Where 4, 4' Methylene bis (2-Chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(19) 29 CFR 1910.101(b) shall be amended by revocation of referenced pamphlet P-1-1965 and the adoption of P-1-1974, herein filed by reference.

(20) 29 CFR 1910.1029 Exposure to Coke Oven Emissions as printed in the Federal Register, Volume 41, Number 206, Friday, October 22, 1976, a copy of which is attached hereto, is adopted by reference.

(21) Corrections and omissions which have been adopted by the U.S. Department of Labor, relating to Coke Oven Emissions Standards, 29 CFR 1910.1029, published in the Federal Register, Volume 42, Number 12, Tuesday, January 18, 1977, a copy of which is attached hereto, is hereby adopted by reference.

(22) 29 CFR 1910.309 is hereby amended by revising Paragraph (c) to require either the use of Ground-fault Circuit Interrupters or the implementation of an assured equipment grounding conductor program on construction sites. This amendment, as published in the Federal Register, Volume 41, No. 246, Tuesday, December 21, 1976, a copy of which is attached hereto, is hereby adopted by reference with the following modification:

"Effective Date: Page 55704, 2nd paragraph is changed to read, 'These amendments of Part 29 CFR 1910 become effective August 22, 1977.'"

(23) The following corrections and omissions which have been adopted by the U.S. Department of Labor, copies of which are attached hereto, are hereby adopted by reference.

(a) Federal Register, Volume 39, No. 233, December 3, 1974, Standard for Exposure to Vinyl Chloride-corrections;

(b) Federal Register, Volume 40, No. 18, January 27, 1975;

1. Mechanical power presses-corrections

2. Correct error of omission-Table H-12

(c) Federal Register, Volume 40, No. 58, March 25, 1975, Standard for Exposure to Vinyl Chloride-effective date;

(d) Federal Register, Volume 40, No. 82, April 28, 1975, National Fire Protection Association mailing address change;

(e) Federal Register, Volume 40, No. 125, June 27, 1975, Overhead and Gantry Cranes, Paragraph 1910.179(j)(2)(iv)-corrections and (v) revoked; Paragraph 1910.190 Standards Organization-amended;

(f) Federal Register, Volume 40, No. 145, July 28, 1975, Industrial Slings-correction.

(24) 29 CFR 1910.410 through 1910.441, Subpart T, the Occupational Safety and Health Commercial Diving Standard, published in the Federal Register, Volume 42, No. 141, Friday, July 22, 1977, a copy of which is attached hereto, is hereby adopted by reference.

(25) 29 CFR 1910.1028 the permanent standard "Occupational Exposure to Benzene," printed in the Federal Register, Volume 43, No. 29, February 10, 1978, a copy of which is hereto, is hereby adopted by reference. Amend 29 CFR 1910.1028 by exempting:

(a) Employee exposure from liquid mixtures containing 0.5 percent (0.1 percent after June 27, 1981) or less Benzene by volume, or the vapors released from such liquids.

(b) The caution label requirements for liquid mixtures containing 5.0 percent or less Benzene packaged before June 27, 1978.

(26) 29 CFR 1910.1044 "Occupational Exposure to 1, 2 Dibromo-3-Chloropropane (DBCP)," printed in the Federal Register, Volume 43, No. 53, March 17, 1978, a

copy of which is attached hereto, is hereby adopted by reference.

(27) (a) 29 CFR 1910.1018 "Occupational Exposure to Inorganic Arsenic," printed in the Federal Register, Volume 43, No. 88, May 5, 1978, a copy of which is attached hereto, is hereby adopted by reference.

(b) The corrections and omissions, adopted by the U.S. Department of Labor, which appeared in Federal Register 28472, June 30, 1978, a copy attached hereto, are hereby adopted by reference.

(28) The following corrections and omissions to the standard 29 CFR 1910.1028 "Occupational Exposure to Benzene," which appeared in the Federal Register, Volume 43, No. 63, March 31, 1978, are hereby adopted by reference.

(29) Amend 29 CFR 1910.19 by properly placing air contaminants by paragraph under section heading. This amendment, as adopted by the U.S. Department of Labor, appeared in the Federal Register, page 28473, June 30, 1978, a copy of which is attached hereto, is adopted by reference.

(30) 29 CFR 1910.1043 and 29 CFR 1910.1046 "Occupational Exposure to Cotton Dust," printed in the Federal Register, Volume 43, No. 122, June 23, 1978, and the corrections and omissions to this standard which appeared in the Federal Register 28474, June 30, 1978 and 35032, August 8, 1978, copies of which are attached hereto, are hereby adopted by reference.

JAMES R. YOCOM, Commissioner

ADOPTED: August 24, 1978

APPROVED: MIKE HELTON, Secretary

RECEIVED BY LRC: September 15, 1978 at 12:45 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

DEPARTMENT OF HOUSING,
BUILDINGS AND CONSTRUCTION
Division of Plumbing
(Proposed Amendment)

815 KAR 20:040. Truck [and equipment] identification.

RELATES TO: KRS [Chapter] 318.170

PURSUANT TO: KRS 13.082, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.170 to enforce the provisions of the state plumbing laws and code. It is difficult to maintain adequate surveillance for persons who are installing or constructing plumbing systems without their trucks [and equipment] being properly identified. Identification as set forth in this regulation would greatly assist the department in carrying out this function.

Section 1. Truck[s and Equipment] Identification. All trucks [and mobile equipment] used in the operation of a plumbing business shall be properly identified. The equipment shall bear the name of [the master plumber,] the

company [owner of the business] and [/or the master plumber representing the business as well as] the master plumber's Kentucky license number. All such identification shall be in letters not smaller than three (3) inches high and must be kept legible at all times.

MIKE HELTON, Secretary

ADOPTED: September 7, 1978

RECEIVED BY LRC: September 8, 1978 at 3:15 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Eugene F. Perkins, Director, Department of Housing, Buildings and Construction, Division of Plumbing, The 127 Building, U. S. 127 South, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(Proposed Amendment)

815 KAR 40:010. Construction requirements to accommodate physically handicapped.

RELATES TO: KRS 227.305, 227.200(8), 227.990

PURSUANT TO: KRS 13.082, 227.305

NECESSITY AND FUNCTION: KRS 227.305(1), effective July 1, 1978, requires the Commissioner of the Department of Housing, Buildings and Construction to issue regulations relating to the minimum requirements for facilities for physically handicapped persons in all public buildings and public accommodations constructed or remodeled after June 21, 1978, and requires him, in doing so, to adopt those standards known as the American National Standards Institute (ANSI) Specifications. KRS 227.305(2), effective July 1, 1978, provides that no building permit or other official authorization for construction or remodeling of a public building or public accommodation by any person is valid unless the plans and specifications are in compliance with the regulations issued by the Commissioner pursuant to KRS 227.305 and 227.200(8). This regulation has not prescribed procedures for enforcing such compliance. KRS 227.200(8)(c) was amended effective June 17, 1978 to re-define "public accommodations." This amended regulation: prescribes the procedures for submission of construction or remodeling plans to the Department of Housing, Buildings and Construction and to local building officials to insure compliance with KRS 227.305 and the regulations and standards adopted thereunder; prescribes the persons responsible for plans submission, review and approval; incorporates the ANSI specifications A117.1-1961 (R1971) in the text of the regulations; sets forth the sizes and types of buildings for which plans must be reviewed and approved by both the Department of Housing and all local building officials; describes how the law will be enforced; adds new definitions of "local building official," "Department," and definitions from ANSI specifications; and amends the definitions of "public building," "public accommodation" and "remodel." [KRS 227.305 requires the State Fire Marshal's Office to issue regulations relating to the minimum requirements for facilities for the physically handicapped in all public buildings and public accommodations. This regulation sets out the standards to be enforced by the State Fire Marshal's Office.]

Section 1. Definitions: (1) "Public building" shall mean any building or portion of any building constructed, owned, or leased by the Commonwealth or any political subdivision thereof; including but not limited to schools, except three (3) or less relocatable classroom units when used in conjunction with an existing school facility; colleges, and other institutions of higher learning; courthouses; medical centers, hospitals, and clinics; train depots and airports; but where only a portion of a building is constructed, owned or leased by the Commonwealth or any political subdivision thereof, the remaining portions or floors shall not come within the scope of this definition, except to the extent that the facilities, equipment, structures or spaces in such building are directly and necessarily required to facilitate the accessibility of physically handicapped persons to the "public building" portions [except three (3) or less relocatable classroom units when used in conjunction with an existing school facility];

(2) "Public accommodation" shall mean any building or portion of any building which serves the general public and which also is:

(a) An [Any] inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five (5) rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(b) A [Any] restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises of any retail establishment [;] or any gas station;

(c) A [Any] motion picture house, theater, concert hall, auditorium, gymnasium, sports arena or other place of exhibition or entertainment; [and]

(d) An [Any] establishment or portion thereof [;] which [1. Which] is physically located within any establishment otherwise covered by this definition [, or within the premises of which is physically located any such covered establishment,] and which [2. Which] holds itself out as serving patrons of such covered establishment; [, and]

(e) [3.] A [This includes but is not limited to] shopping center[s], department store[s], bowling alley or [and] other establishment[s] within which is located a covered establishment and which holds itself out as serving patrons of a covered establishment; [.]

(f) "Public accommodation" shall not mean a private club; a building housing professional offices; a business, general office, commercial, mercantile or industrial building; or other such establishment that is not in fact open to or serving the general public, except and only to the extent that the facilities of such establishment or building are made available to the customers or patrons of a covered establishment.

(3) "Physically handicapped person" shall mean a person confined to a wheelchair; a person who uses braces or crutches; a person who because of the loss of a foot or leg or because of an arthritic, spastic, pulmonary or cardiac condition, walks with difficulty or insecurity; a person who suffers from a faulty coordination or palsy; a person who is blind or whose sight is so impaired that, functioning in a public area, he is insecure or exposed to danger; a person whose hearing is so impaired that he is unable to hear warning signals; and a person whose mobility, flexibility, coordination and perceptiveness are significantly reduced by aging;

(4) "Facility for physically handicapped persons" shall mean any convenience or device which facilitates the health, safety, or comfort of a handicapped person, in-

cluding, but not limited to, ramps, handrails, elevators, and doors;

(5) "American National Standard Institute Specifications" shall mean the American National Standard Institute Specifications for making buildings and facilities accessible to, and usable by, the physically handicapped, ANSI A117.1-1961 (R1971);

[(6) "American Standard A9.1-1953" shall mean American National Standards Institute Specifications for Safety to Life from fire in Buildings and Structures, ANSI A9.1-1971; and]

(6) [(7)] "Remodel" shall mean, with respect to an existing public building or public accommodation, to construct an addition, make modifications or [substantial] repairs, or [substantially] alter the appearance, design, construction or layout of a building or portion thereof so as to restrict exits or exit facilities, enlarge the total floor area, change the type or classification of construction, or otherwise limit or decrease accessibility of physically handicapped persons to such building or portion thereof; [.]

(7) "Local building official" shall mean the appointed or elected officer or other designated employee of any county, city, or urban-county government or other political subdivision of the Commonwealth, or of any state agency or instrumentality charged with the responsibility and vested with the authority to review plans and specifications, conduct license or permit-related inspections, and issue, award, renew, alter, suspend or revoke building and construction licenses or permits, occupancy and use licenses or permits, commencement-of-construction licenses or permits, or any other official authorization for construction or remodeling of public buildings or public accommodations in his control or jurisdiction, regardless of the standards, codes, regulations, policies or local ordinances applied or enforced by such officer or employee in making such reviews, conducting such inspections, or taking any action on any such permit or license;

(8) "Department" shall mean the Department of Housing, Buildings and Construction;

(9) "Non-ambulatory disabilities" shall mean impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs;

(10) "Semi-ambulatory disabilities" shall mean impairments that cause individuals to walk with difficulty or insecurity. Individuals using braces or crutches, amputees, arthritics, spastics, and those with pulmonary and cardiac ills may be semi-ambulatory;

(11) "Sight disabilities" shall mean total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to danger;

(12) "Hearing disabilities" shall mean deafness or hearing handicaps that might make an individual insecure in public areas because he is unable to communicate or hear warning signals;

(13) "Disabilities of incoordination" shall mean faulty coordination or palsy from brain, spinal, or peripheral nerve injury;

(14) "Aging" shall mean those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination, and perceptiveness but are not accounted for in the aforementioned categories;

(15) "Standard" shall mean, when the term appears in small letters and is not preceded by the word "American," that it is descriptive and does not refer to an American standard approved by ASA; for example, a "standard" wheelchair is one characterized as standard by the manufacturers;

(16) "Fixed turning radius, wheel to wheel" shall mean the tracking of the castor wheels and large wheels of a wheelchair when pivoting on a spot;

(17) "Fixed turning radius, front structure to rear structure" shall mean the turning radius of a wheelchair, left front-foot platform to right rear wheel, or right front-foot platform to left rear wheel, when pivoting on a spot;

(18) "Involved" ("involvement") shall mean a portion or portions of the human anatomy or physiology, or both, that have a loss of impairment of normal function as a result of genesis, trauma, disease, inflammation, or degeneration;

(19) "Ramps," "ramps with gradients" shall mean ramps with gradients (or ramps with slopes) that deviate from what would otherwise be considered the normal level. An exterior ramp, as distinguished from a "walk" would be considered an appendage to a building leading to a level above or below existing ground level; and

(20) "Walk," "walks" shall mean a predetermined, prepared-surface, exterior pathway leading to or from a building or facility, or from one exterior area to another, or surrounding a building or a part of a building, placed on the existing ground level and not deviating from the level of the existing ground immediately adjacent.

Section 2. Basic Requirements. (1) All public buildings and public accommodations [to be] constructed or remodeled after November 13, [June 21,] 1974, shall meet the requirements of these regulations and of any orders of the department issued pursuant thereto [American National Standard Institute Specifications A117.1-1961 (R1971); herein filed by reference].

(2) After November 13 [June 21], 1974, no building permit or other official authorization for construction or remodeling of a public building or public accommodation by the department, a local building official or by any other person is valid unless the plans and specifications therefor are in compliance with these regulations.

(3) These regulations are intended to make all buildings and facilities defined in Section 1 accessible to, and functional for, the physically handicapped, to, through, and within their doors, without loss of function, space, or facility where the general public is concerned. These regulations are concerned with non-ambulatory disabilities, semi-ambulatory disabilities, sight disabilities, hearing disabilities, disabilities of incoordination, and aging. They incorporate the standards known as the American National Standard Institute Specifications A117.1-1961 (R1971) and reflect great concern for safety of life or limb.

(4) In cases of practical difficulty, unnecessary hardship, or extreme differences, the department, but not local building officials, may grant exceptions from the literal requirements of these regulations or permit the use of other methods or materials, but only when it is clearly evident that equivalent accessibility and protection from loss of life and limb are thereby secured.

Section 3. Minimum Building Interior Facilities For Physically Handicapped Persons: (i) Toilet rooms:

(a) Where toilet rooms are provided for general public or patron use in a single-story public accommodation, a minimum of two percent (2%) of total toilet room stalls and other fixtures, but not less than one (1) toilet room, or, in the case of a multi-story public accommodation [building], a minimum of one (1) toilet room [fixture] within each four (4) floors, shall meet the following requirements [of]: [ANSI A117.101961 (R1971), 5.6.1.-5.6.6.]

1. Toilet rooms shall have space to allow traffic of individuals in wheelchairs, in accordance with subsection (5)(c) 1., 2. and 3. of this section.

2. Where toilet rooms have at least one (1) toilet stall, such rooms shall have at least one (1) toilet stall that:

- (i) Is three (3) feet wide;
- (ii) Is at least four (4) feet eight (8) inches, preferably five (5) feet, deep;
- (iii) Has a door (where doors are used; that is thirty-two (32) inches wide and swings out;
- (iv) Has handrails or "grab bars" on each side, thirty-three (33) inches high and parallel to the floor, one and one-half (1½) inches in outside diameter, with one and one-half (1½) inches clearance between rail and wall, and fastened securely at ends and center; and,
- (v) Has a water closet with the seat twenty (20) inches from the floor.

(vi) The design and mounting of the water closet is of considerable importance. A wall-mounted water closet with a narrow understructure that recedes sharply is most desirable. If a floor-mounted water closet must be used, it shall not have a front that is wide and perpendicular to the floor at the front of the seat. The bowl shall be shallow at the front of the seat and turn backward more than downward to allow the individual in a wheelchair to get close to the water closet with the seat of the wheelchair.

3. Where a toilet room does not have a toilet stall, the "grab bars" specified in paragraph (a)2.(iv) above shall be located not greater than eighteen (18) inches from the center of the water closet, and on both sides of the water closet.

4. Toilet rooms shall have lavatories with narrow aprons, which when mounted at standard height are usable by individuals in wheelchairs; or shall have lavatories mounted as the department may require, when particular designs demand, so that they are usable by individuals in wheelchairs. (Note: It is important that drain pipes and hot-water pipes under a lavatory be covered or insulated, so that a wheelchair individual without sensation will not be burned.)

5. Where mirrors and shelves are provided, they shall be above lavatories at a height as low as possible, and no higher than forty (40) inches above the floor, measured from the top of the shelf and the bottom of the mirror.

6. Where toilet rooms for men have wall-mounted urinals, the lip of the basin shall be nineteen (19) inches from the floor, or the rooms shall have floor-mounted urinals that are on level with the main floor of the toilet rooms.

7. Where toilet rooms have towel racks, towel dispensers, and other dispensers and disposal units, they shall be mounted no higher than forty (40) inches from the floor.

(b) [Exception: Where one or more toilet rooms are provided] In [in] a [an individual] residential public building [unit] or repetitive series [suite] of residential public buildings [units] in [of] publicly-owned residential projects, a minimum of five (5) percent or a minimum of one (1), whichever is greater, of the toilet rooms shall comply with sub-paragraphs 1., 2., 3., 4., 5., and 7. of subsection (1)(a) of this section [ANSI A117.1-1961 (R1971), 5.6.1, 5.6.2, 5.6.4, 5.6.6.] and shall have walls capable of supporting handrails which can support a 250 pound load.

(2) Water fountains: Where water fountains, coolers or other water dispensing means are provided, such water fountains shall meet the following requirements: [comply with ANSI 117.1-1961 (R1971) 5.7.1, 5.7.2]

(a) Water fountains and coolers shall have up front spouts and controls;

(b) Water fountains and coolers shall be hand-operated or hand-and-foot operated;

(c) Conventional floor-mounted water coolers shall be permitted if a small fountain is mounted on the side of the cooler thirty (30) inches above the floor;

(d) Wall-mounted, hand-operated coolers shall be permitted when the cooler is mounted with the basin thirty-six (36) inches from the floor;

(e) Fully-recessed water fountains shall not be permitted; and

(f) Water fountains shall not be set into an alcove unless the alcove is wider than a standard wheelchair.

(3) Public telephones: Where "banks" of more than three (3) public telephones are located, at least one (1) public telephone shall be placed no farther than 48 inches from the floor, so that the dial and the handset can be reached by individuals in wheelchairs [be made usable by the physically handicapped in accordance with ANSI 117.1-1961 (R1971), 5.8.1, 5.8.2].

(4) Inns, hotels, motels, and other establishments providing lodging to transient guests: In all inns, hotels, motels, and other establishments which provide lodging to transient guests, other than an establishment located within a building which contains not more than five (5) rooms for rent or hire and which is actually occupied by the proprietor of such establishment[s] as his residence, a minimum of five percent (5%) or a minimum of one (1), whichever is greater, of lodging rooms must comply with all applicable provisions of these regulations [ANSI 117.1-1961].

(5) Seating for places of assembly; wheelchair accessibility:

(a) In places of assembly with fixed type seating and a capacity greater than forty (40) seats, identified spaces for the handicapped with crutches and/or walkers and the wheelchair handicapped shall be provided at a rate of one percent (1%), or a minimum of two (2), whichever is greater, of the total seating capacity [shall be set aside for the handicapped with crutches and/or walkers].

(b) Such spaces and seating shall be located as an integral part of the overall floor plan of said assembly area.

(c) Seats and spaces shall be designed to conform with the following requirements of accessibility for the handicapped with wheelchairs and crutches: [described in ANSI 117.1-1971, 3.1, 3.2, 3.3, 3.4.]

1. Wheelchair specifications: The collapsible-model wheelchair of tubular metal construction with plastic upholstery for back and seat is most commonly used. The standard model of all manufacturers falls within the following limits, which are used as the basis of consideration in these regulations:

(i) Length: forty-two (42) inches;

(ii) Width, when open: twenty-five (25) inches;

(iii) Height of seat from floor: nineteen and one-half (19½) inches;

(iv) Height of armrest from floor: twenty-nine (29) inches;

(v) Height of pusher handles (rear) from floor: thirty-six (36) inches;

(vi) Width, when collapsed: eleven (11) inches.

2. The functioning of a wheelchair:

(i) The fixed turning radius of a standard wheelchair, wheel-to-wheel, is eighteen (18) inches. The fixed turning radius, front structure to rear structure, is thirty-one and one-half (31½) inches.

(ii) The average turning space required (180 and 360 degrees) is sixty-three by fifty-six (63 x 56) inches. (Note: In an area with two (2) open ends, such as might be the case in a corridor, a minimum of fifty-four (54) inches between two walls would permit a 360-degree turn.)

(iii) A minimum width of sixty (60) inches is required for two (2) individuals in wheelchairs to pass each other.

3. The adult individual functioning in a wheelchair:

(i) The average unilateral vertical reach is sixty (60) inches, and ranges from fifty-four (54) inches to seventy-eight (78) inches.

(ii) The average horizontal working (table) reach is 30.8 inches, and ranges from 28.5 inches to 33.2 inches.

(iii) The average bilateral horizontal reach, both arms extended to each side, shoulder high, is 64.5 inches, and ranges from fifty-four (54) inches to seventy-one (71) inches.

(iv) An individual reaching diagonally, as would be required in using a wall-mounted dial telephone or towel dispenser, requires an average reach (on the wall) of forty-eight (48) inches from the floor.

4. The individual functioning on crutches:

(i) On the average, individuals five (5) feet six (6) inches tall require an average of thirty-one (31) inches between crutch tips in the normally accepted gaits.

(ii) On the average, individuals six (6) feet tall require an average of 32.5 inches between crutch tips in the normally accepted gaits.

(6) Instructional facilities, dining halls, libraries and other areas utilizing fixed facilities:

(a) Where fixed tables are used, a minimum of two percent (2%) or at least one (1), shall have twenty-nine (29) inches clearance under the table top, and if aprons are greater than two (2) inches, they shall be recessed one (1) foot. In dining areas and libraries, all fixed tables shall meet this requirement.

(b) Width between fixed tables shall be a minimum five (5) feet, five (5) inches.

(c) Outside rail heights of fixed tray slides in dining areas shall be no greater than thirty-four (34) inches.

(d) Aisles between fixed tray slides and control railings in dining areas shall be a minimum of thirty-four (34) inches.

(e) In areas with twenty-four (24) or more fixed stations or seats (e.g., lecture halls, libraries, dining areas, and other work or study areas), [or] two percent (2%), or at least one (1) station or seat, shall be designed to conform with the requirements of accessibility for wheelchairs described in subsection (5)(c) of this section [ANSI 117.1-1961 (R1971), 3.1, 3.2, 3.3, 3.4].

(f) In laboratories and other work or study areas using work benches, each "handicapped station" shall be designed to have a low work bench with a clear minimum of twenty-nine (29) inches, (floors to underside of work area) and shall not have an apron.

(g) Aisles between fixed work benches shall have a minimum clear width of three (3) feet.

(h) Aisles between fixed stacks in libraries shall be a minimum width of four (4) feet.

(7) Elevators: In a multiple-story building, elevators serving the general public shall conform to the following requirements:

[(7) Doors: All doors made accessible to the physically handicapped should be automatically operated.]

(a) Elevators shall be accessible to, and usable by, the physically disabled on the level that they use to enter the building, and at all levels normally used by the general public.

(b) Elevators and elevator doors shall allow for traffic by wheelchairs, in accordance with Section 3(5)(c) 2., turning and passing space, and Section 5(3), doors, of this regulation.

(8) controls: Switches and controls for light, heat, ventilation, windows, draperies, fire alarms and all similar controls of frequent or essential use, shall be placed within the reach of individuals in wheelchairs as prescribed in Section 3(5)(c) 3. of this regulation.

(9) Interior facilities identification: Identification of specific facilities within a building that are used by the public is particularly essential to the blind and shall be made as follows:

(a) Raised letters or numbers shall be used to identify rooms or offices. Such identification shall be placed on the wall, to the right or left of the door, at a height between four (4) feet six (6) inches and five (5) feet six (6) inches, measured from the floor, and preferably at five (5) feet.

(b) Doors that are not intended for normal use, and that might prove dangerous if a blind person were to exit or enter by them, such as doors leading to loading platforms, boiler rooms, stages, fire escapes, etc., shall be made quickly identifiable to the touch by knurling the door hand or knob.

(10) Warning signals:

(a) Audible warning signals shall be accompanied by simultaneous visual signals for the benefit of those with hearing disabilities.

(b) Visual warning signals shall be accompanied by simultaneous audible signals for the benefit of the blind.

(11) Hazards:

(a) Every effort shall be exercised to eliminate hazards to individuals with physical disabilities.

(b) Access panels or manholes in floors, walks, ramps and walls can be extremely hazardous, particularly when open or in use, and shall be avoided whenever possible.

(c) When manholes or access panels are open and/or in use, or when an open excavation exists on a site, particularly when it is proximate to normal pedestrian traffic, barricades shall be placed on all open sides at least eight (8) feet from the hazard, and temporary warning devices shall be installed in accord with subsection (10) of this section.

(d) Low-hanging door closers that remain within the openings of a doorway when the door is open, or that protrude hazardously into regular corridors or traffic ways when the door is closed, shall be avoided whenever possible.

(e) Low-hanging signs, ceiling lights, and similar objects or signs and fixtures that protrude into regular corridors or traffic ways shall be avoided. A minimum height of seven (7) feet, measured from the floor, is required for such objects wherever practicable.

(f) Lighting on ramps shall be in accordance with Section 5-10 of the Life Safety Code 1973, NFPA Pamphlet 101, to provide a minimum of one (1) foot candle illumination on the ramp walking surface.

(g) Exit signs shall be in accordance with Section 5-11 of the Life Safety Code 1973, NFPA Pamphlet 101, requiring all required exits be marked by approved exit signs, and additional handicapped accessibility symbols shall be provided for those exits designated and designed for use by the handicapped in accordance with subsection (9) of this section.

Section 4. Site Development: (1) Grading: The grading of ground, even contrary to existing topography, so that it attains a level with a normal entrance, is recommended to

make a facility accessible to individuals with physical disabilities.

(2) Walks:

(a) Public walks, including a sidewalk immediately adjacent to and/or surrounding the building, shall be at least forty-eight (48) inches wide and shall have a gradient not greater than five (5) percent.

(b) Such walks shall be of a continuing common surface, not interrupted by steps or abrupt changes in level.

(c) Wherever walks cross other walks, driveways, or cross or enter parking lots, they shall blend to a common level. The preferred method of meeting this requirement is to have the walk incline to the level of the street. However, at principal intersections, it is vitally important that the curb run parallel to the street, up to the point where the walk is inclined, at which point the curb would turn in and gradually meet the level of the walk at its highest point. This will allow the blind to follow the curb with a cane when going up or down a ramp from the sidewalk to the street, or to discover the curb after crossing a street.

(d) A walk shall have a level platform at the top which is at least five (5) feet by five (5) feet, if a door swings out onto the platform or toward the walk. This platform shall extend at least one (1) foot beyond each side of the doorway. (See also Sections 5(1)(d) and (3)(c) for similar requirements.)

(e) A walk shall have a level platform at least three (3) feet deep and five (5) feet wide, if the door does not swing onto the platform or toward the walk. This platform shall extend at least one (1) foot beyond each side of the doorway. (See also Sections 5(1)(e) and (3)(c) for similar requirements.)

(3) Parking lots:

(a) A minimum number of parking spaces that are accessible to the facility shall be set aside as required in paragraph (e) of this subsection and shall be identified for use by individuals with physical disabilities in accordance with Section 5, subsection (6).

(b) Each required parking space shall be open on one side, allowing room for individuals in wheelchairs or individuals on braces and crutches to get in and out of an automobile onto a level surface, suitable for wheeling and walking, except that parking spaces placed between two (2) conventional diagonal or head-on parking spaces, shall be at least twelve (12) feet wide.

(c) Walks crossing, entering or exiting parking lots shall be in conformity with subsection (2) of this section.

(d) [Section 4.] Parking lot-to-sidewalk ramps:

1. [(1)] In order to enable persons using wheelchairs to travel freely and without assistance from parking lot to sidewalk, a ramp with nonslip surface shall be built into the curb so that the sidewalk and parking lot blend to a common level.

2. [(2)] Where such ramps are required, they shall not have a slope greater than one (1) foot rise in twelve (12) feet, or 8.33 percent, or four (4) degrees fifty (50) minutes, and [(3) Where such ramps are required, they] shall be at least thirty-two (32) inches wide.

3. [(4)] Care shall be taken so that the curb cut is not itself a hazard to the blind.

4. Handrails shall be provided for such ramps in accordance with Section 5(1)(b).

(e) [Section 5.] Parking spaces, minimum number:

1. The minimum number of handicap parking spaces shall be as follows:

Total Spaces In Parking Lot	Required Number Of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of Total—plus 1
over 1,000	for each 200 over 1,000

Section 5. Building Design and Construction. (1) Ramps with gradients: Where ramps with gradients are constructed or used, they shall conform to the following specifications:

(a) A ramp in the interior of a building shall be at least forty-eight (48) inches wide and shall not have a slope greater than one (1) foot rise in twelve (12) feet, or 8.33 percent, or four (4) degrees fifty (50) minutes.

(b) A ramp shall have handrails on at least one (1) side, and preferably two (2) sides, that are thirty-two (32) inches in height, measured from the surface of the ramp; that are smooth; that extend one (1) foot beyond the top and bottom of the ramp; and that otherwise conform with American Standard Safety Code for floor and wall openings, railings, and toe boards. A12-1932. Where two (2) sets of handrails are installed, they shall be separated by forty-eight (48) inches at a minimum for interior ramps, and thirty-two (32) inches at a minimum for exterior parking lot-to-sidewalk ramps. (Note: Care should be taken that the extension of the handrail is not in itself a hazard. The extension may be made on the side of a continuing wall.)

(c) A ramp shall have a surface that is non-slip.

(d) A ramp shall have a level platform at the top which is at least five (5) feet by five (5) feet, if a door swings out onto the platform or toward the ramp. This platform shall extend at least one (1) foot beyond each side of the doorway. (See "Walks," Section 4(2)(d) and "Doorways," Section 5(3)(c) for similar requirements.)

(e) A ramp shall have a level platform at least three (3) feet deep and five (5) feet wide, if the door does not swing onto the platform or toward the ramp. This platform shall extend at least one (1) foot beyond each side of the doorway. (See "Walks," Section 4(2)(e) and "Doorways," Section 5(3)(c) for similar requirements.)

(f) Each ramp shall have at least six (6) feet of straight clearance at the bottom.

(g) Ramps shall have level platforms at thirty (30) foot intervals for purposes of rest and safety and shall have level platforms wherever they turn.

(2) Entrances:

(a) At least one (1) primary entrance to or exit from each building or portions of each building subject to these regulations shall be usable by individuals in wheelchairs.

(b) Entrances also serve as exits, some being particularly important in case of an emergency. Because the proximity of such exits to all parts of building and facilities is essential for life safety, the department may require that all or certain specified entrances or exits shall be accessible to, and usable by, individuals in wheelchairs and individuals with other forms of physical disability. The department shall consider the design, function and original layout of

the building and its facilities before making such additional requirements.

(c) In buildings with elevators or chairlifts, at least one (1) entrance usable by individuals in wheelchairs shall be on a level that is accessible to the elevators or chairlifts.

(3) Doors and doorways:

(a) All doors made accessible to the physically handicapped should be automatically operated.

(b) Doors shall have a clear opening of no less than thirty-two (32) inches when open and shall be operable by a single effort. At least one (1) of the two (2) leaves of a two(2) leaf door shall operate by a single effort.

(c) The floor on the inside and outside of each doorway shall be level for a distance of five (5) feet from the door in the direction the door swings and shall extend one (1) foot beyond each side of the door. (See also Section 4(2)(d) and (e), "Walks," and 5(1)(d) and (e), "Ramps," for similar requirements.)

(d) Sharp inclines and abrupt changes in level shall be avoided at doorsills. As much as possible, thresholds shall be flush with the floor. These requirements apply both to exterior and interior doors and doorways.

(4) Stairs:

(a) Stairs shall conform to Section 5-3, 1973 Life Safety Code.

(b) Steps in stairs that might require use by those with disabilities of incoordination or semi-ambulatory disabilities or by the aged shall not have abrupt (square) nosing.

(c) Stairs shall have handrails thirty-two (32) inches high as measured from the tread at the face of the riser.

(d) Stairs shall have at least one (1) handrail that extends at least eighteen (18) inches beyond the top step and beyond the bottom step. Two (2) handrails are recommended, and the Department may require two (2) handrails in accordance with Section 5-3161 of the 1973 Life Safety Code, or where the stairs exceed eighty-eight (88) inches in width, in order to assure proper egress in event of emergency. (Note: Care should be taken that the extension of the handrails is not in itself a hazard. The extension may be made on the side of a continuing walls.)

(e) Steps shall, in accordance with Section 5-3121 of the 1973 Life Safety Code, have risers that do not exceed eight (8) inches in height.

(5) Floors:

(a) Floors shall have a surface that is nonslip.

(b) Floors on a given story shall be of a common level throughout or shall be connected by a ramp that is constructed in accordance with subsection (1)(a) through (f) of this section.

(c) Floors in adjacent but different parts of the same building or in adjacent but separate buildings, as for example in a gymnasium or auditorium connected to a school building, where the different parts of the same building or the separate buildings share a common doorway used for required entrance or exit purposes in either part or either building, shall be of a common level throughout the parts or buildings or shall be connected by a ramp constructed in accordance with subsection (1) of this section.

(d) There shall not be a difference between the level of the floor of a corridor and the level of the floor of adjacent toilet rooms, or the level of the floor of an adjacent meeting room, dining room, or other room, unless proper ramps are provided in accordance with subsection (1) of this section.

(6) [Section 6.] Building Identification:

(1) All buildings shall have sufficient markings to indicate the location of all facilities for the physically han-

dicapped including but not limited to: parking spaces, access ramps, and toilet rooms.

(2) The international symbol of access shall be displayed only on those buildings in which a person in a wheelchair can enter unassisted, conduct his business, use its facilities, and return to the mainstream of pedestrian traffic or a parked automobile without meeting physical impediments of design or construction.

(3) A small international symbol of access may be displayed in large public use buildings to identify certain facilities that have been made accessible and usable by the handicapped.

(4) Use of the international symbol shall conform to these specifications: [.]

(a) Visibility requires that the symbol be no smaller than four (4) inches (ten (10) centimeters) on each side; at long distances, an eighteen (18) inch (forty-five (45) centimeters) square would normally be sufficiently large. Size for road signs or large display should maintain the square proportion and not alter the abstract figure in the wheelchair.

(b) Color should be blue or black for high contrast. If made of metal, black on silver or gold is preferred. If necessary, coloring may be reversed.

Section 6. Submission of Plans to Department. (1) Plans, drawings and specifications bearing the seals and signatures of architects and/or engineers registered in Kentucky, and acting within the scope of their respective professional registrations in accordance with KRS Chapters 322 and 323, shall be submitted to the New Construction and Energy Section of the department for review and approval for compliance with this regulation before any construction or remodeling has begun for the following listed establishments, buildings, structures or facilities:

(a) All "public buildings," as defined in Section 1(1) of this regulation, regardless of size or capacity or type of planned construction; and

(b) All "public accommodations," as defined in Section 1(2) of this regulation, except a mercantile building having a total floor area not exceeding 3,000 square feet, or an office or business building having a total floor area not exceeding 10,000 square feet.

(2) The department may require such detail in plans, drawings and specifications, and the submission of other information including the name and address of the owner and his agents, as may be required to properly ascertain compliance with this regulation, and may for that purpose conduct such on-site inspections of the actual construction or remodeling or of the plans thereto as the commissioner or his authorized deputy may deem proper or necessary.

(3) No employee of the department shall issue any approval for commencement of construction or remodeling of any public building or public accommodation until and unless he certifies in writing that the plans, drawings and specifications are to the best of his knowledge and belief in compliance with this regulation, or a proper written waiver or variance has been granted for any provision of this regulation by the commissioner or his authorized deputy.

(4) The owner or his agent shall notify the department before or at the end of construction or remodeling of any building or portion thereof for which plans and specifications were submitted in accordance with subsection (1) above, in order that a final inspection may be made prior to its use, re-use or occupancy.

Section 7. Submission of Plans to Local Building Official. (1) Plans, drawings and specifications prepared by and bearing the signatures, titles and/or seals of any per-

son authorized or required by law to prepare such plans, drawings and specifications shall be submitted to the local building official in the jurisdiction where the construction or remodeling is proposed, for his review and approval for compliance with this regulation before any construction or remodeling has begun for the following listed establishments, buildings, structures or facilities:

(a) All mercantile buildings defined as a "public accommodation" by Section 1(2) of this regulation and having a total floor area of 3,000 square feet or less; and

(b) All business or office buildings defined as a "public accommodation" by Section 1(2) of this regulation and having a total floor area of 10,000 square feet or less; and

(c) All other "public buildings" or "public accommodations" for which a local building or construction permit is required or authorized by law or ordinance; but, to avoid duplication of review or requirements for duplicate submission of plans, the local building official may accept a written certification by an authorized employee of the department or any other authorized state agency that the plans and specifications for the construction and remodeling of a "public building" or of a "public accommodation" described in this paragraph are in compliance with this regulation.

(2) A local building official may require such detail in plans, drawings and specifications, and the submission of other information including the name and address of the owner and his agents, as may be required to properly ascertain compliance with this regulation, and may for that purpose conduct such on-site inspections of the actual construction or remodeling or of the plans thereto as he may deem proper or necessary.

(3) A local building official or his employee or agent shall not issue or renew any building or construction permit or other official authorization for construction or remodeling of any public building or public accommodation until and unless he:

(a) Certifies in writing that the plans, drawings and specifications for the buildings listed in Section 7(1)(a) and (b) are to the best of his knowledge and belief in compliance with this regulation, and records that certification in his official records; or

(b) Has obtained and recorded in his official records a similar written certification of compliance from the department or any other authorized state agency for those buildings listed in Section 6(1)(a) and (b); and,

(c) Has obtained and recorded in his official records any variance or waiver granted by the commissioner or his authorized deputy in accordance with Section 8 of this regulation.

(4) The owner or his agent shall notify the local building official before or at the end of construction or remodeling of any building or portion thereof for which plans and specifications were submitted in accordance with subsection (1) above, in order that a final inspection may be made prior to its use, re-use or occupancy.

Section 8. Waivers and Variances. (1) the Commissioner of the Department of Housing, Buildings and Construction, or any deputy or employee designated and authorized by him for that purpose, may grant reasonable written exceptions from the literal requirements of these regulations, or permit the use of other methods or materials only when it is clearly evident that equivalent accessibility and protection from loss of life or limb is thereby secured, and he shall record in his official records,

and if applicable under Section 7(1)(c) transmit to the local building official, the reasons for such variances or waiver.

(2) Any owner or his agent, or local building official, requesting such exception shall state the reasons for such request in writing, and the commissioner or his authorized deputy or employee shall respond to such request within ten (10) days of its receipt. Appeals of a decision by the commissioner denying an exception may be taken to the Kentucky Board of Housing in the manner provided in KRS 198B.070.

Section 9. Enforcement. (1) The department, through the commissioner or his designated deputy or employee, and all local building officials shall enforce this regulation as it relates to their respective jurisdictions as set forth in Sections 6 and 7.

(2) Whenever the department, or a local building official, or their designated employee, has reason to believe, or has been given information by any person from which it is reasonable to believe, that a building or construction permit or other official authorization for construction or remodeling of a public building or public accommodation subject to this regulation, has been issued, awarded or renewed in violation of any provision of this regulation, the appropriate official shall take the following steps:

(a) Inspect the public building or public accommodation and, if desirable or necessary, its plans and specifications, to determine the extent of its compliance with these regulations; and,

(b) If any such public building or public accommodation is not in compliance, the department shall:

1. Take such action, within a reasonable time, after notice and hearing in accordance with KRS 198B.070(7) through (12) by the commissioner and the Board of Housing, Buildings and Construction to suspend or revoke such building permit or other official authorization; or,

2. Refer violations of this regulation to the appropriate county attorney for criminal prosecution under KRS 227.990.

(c) If any such public accommodation is not in compliance, the local building official shall:

1. Take such action, within a reasonable time, that will suspend or revoke the building or construction permit in accordance with local law, ordinance or regulation governing procedures for such suspension or revocation; or

2. Take such other action, within a reasonable time, as may be authorized by local ordinance or regulation, including referral of violations of this regulation to the appropriate county attorney for criminal prosecution under KRS 227.990.

(3) For purposes of enforcing these regulations, the department shall have concurrent jurisdiction over any building or accommodation defined in Section 7(1). The commissioner or his authorized deputy may administer oaths, conduct investigations, issue subpoenas to compel attendance of witnesses and the production of records, permits and other evidence, hold hearings and otherwise exercise the authority described in KRS 198B.070(7), and the Board of Housing, Buildings and Construction shall conduct hearings to suspend or revoke building permits or other official authorizations for construction or remodeling in the manner provided for the hearing of appeals in KRS 198B.070(8) through (12) and in any regulations duly

adopted pursuant thereto, in order to administer and enforce these regulations.

BOB G. ESTEP, Deputy Commissioner

ADOPTED: September 14, 1978

APPROVED: MIKE HELTON, Secretary

RECEIVED BY LRC: September 15, 1978 at 12:30 p.m.

PUBLIC HEARING: A public hearing will be held at 10:00 a.m., EDT, on Friday, October 13, 1978, in the Auditorium of the Capital Plaza Tower, Room G-2, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Administrative Services
(Proposed Amendment)

901 KAR 1:025. Schedule III substances.

RELATES TO: KRS Chapter 218A

PURSUANT TO: KRS 13.082, 194.050, 211.090 [211.990]

NECESSITY AND FUNCTION: KRS 218A.080 provides that the Department for Human Resources shall place a substance in Schedule III under the Kentucky Controlled Substances Act if: (1) the substance has a potential for abuse less than the substances listed in Schedules I and II; (2) the substance has currently accepted medical use in treatment in the United States; and (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. The Department for Human Resources hereby finds that the substances in this regulation meets this criteria.

Section 1. Amphetamine and Methamphetamine Combination Products. The Department for Human Resources hereby designates the following amphetamine and methamphetamine combination products as "Schedule III Controlled Substances" and any other drug of the quantitative composition shown below or which is the same except that it contains a lesser quantity of controlled substances, to wit:

(1) Edrisal; Tablet: Amphetamine sulfate 2.5 mg.; aspirin, 162 mg.; phenacetin 162 mg.

(2) Genegesis Capsules; Capsule: Methamphetamine hydrochloride, 1.2 mg.; chlorpheniramine maleate, 3.8 mg.; phenacetin, 120.0 mg.; salicylamide, 180.0 mg.; caffeine, 30.0 mg.; ascorbic acid, 50.0 mg.

(3) Hovizyme; Tablet: Methamphetamine hydrochloride, 0.5 mg.; conjugated estrogens-equine, 0.125 mg.; methyl testosterone, 1.25 mg.; amylase, 10.0 mg.; protease, 5.0 mg.; cellulase, 2.0 mg.; nicotinyl alcohol tartrate, 7.5 mg.; dehydrocholic acid, 50.0 mg.; ferrous fumarate, 6.0 mg.

(4) Mediatric; Tablet or capsule: Methamphetamine hydrochloride, 1 mg.; conjugated estrogens-equine, 0.25 mg.; methyl testosterone, 2.5 mg.

(5) Mediatric Liquid; Solution (15 cc.): Methamphetamine hydrochloride, 1 mg.; conjugated estrogens-equine, 0.25 mg.; methyl testosterone, 2.5 mg.

(6) Special Formula 711; Tablet: d-Amphetamine

sulfate, 2.5 mg.; mephenesin, 500 mg.; salicylamine, 300 mg.

(7) Thora-Dex No. 1; Tablet: Dextroamphetamine sulfate, 2 mg.; chlorpromazine hydrochloride, 10 mg.

(8) Thora-dex No. 2; Tablet: Dextroamphetamine sulfate, 5 mg.; Chlorpromazine hydrochloride, 25 mg.

[Section 2. Certain Narcotic Drug Products Containing Non-Narcotics Active Medicinal Ingredients. The Department for Human Resources hereby designates the following narcotic drug products containing non-narcotic active medicinal ingredients as "Schedule III Controlled Substance," and any other drug of the quantitative composition shown in the list below or which is the same except that it contains a lesser quantity of controlled substances, to wit: Lomotil tablet/liquid: Not more than 2.5 milligrams of diphenoxylate hydrochloride and not less than 25 micrograms of atropine sulfate per dosage unit.]

Section 2. [3.] Certain Amobarbital, Secobarbital and Pentobarbital Preparations in Combination with a Non-Controlled Substance. The Department for Human Resources hereby designates as "Schedule III" controlled substances the following: Any compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which is not a controlled substance.

Section 3. [4.] Suppository Dosage Forms Containing Amobarbital, Secobarbital and Pentobarbital. The Department for Human Resources hereby designates as "Schedule III" controlled substances the following: Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or salt thereof which has been approved by the United States Food and Drug Administration for marketing only as a suppository.

Section 4. [5.] Stimulants: New Anorectic Drugs. The Department for Human Resources hereby designates as "Schedule III" controlled substances any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical position or geometric), and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Benzphetamine;
- (2) Chlorphentermine;
- (3) Chlortermine;
- (4) Mazindol; and
- (5) Phendimetrazine.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 15, 1978

RECEIVED BY LRC: September 15, 1978 at 3:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(Proposed Amendment)

902 KAR 2:070. Rabies control.

RELATES TO: KRS 258.005 to 258.085, 258.990(1), (2)

PURSUANT TO: KRS 13.082, 195.040, 211.090
NECESSITY AND FUNCTION: KRS 258.005 to 258.085 and 258.990(1), (2) authorize the Department for Human Resources to administer a statewide rabies control program. The purpose of this regulation is to establish uniform procedures for the diagnosis, prevention, and control of rabies.

Section 1. Brands and Types of Approved Vaccine. The Department for Human Resources hereby approves all brands and types of anti-rabies vaccine approved by the United States Department of Agriculture administered in accordance with the manufacturers' instructions; provided, however, that vaccines certified to induce at least three (3) year immunity shall be used exclusively in mass immunization clinics sponsored by local health departments or by the Department for Human Resources.

Section 2. Vaccination Schedule. The vaccination schedule for all dogs shall be as follows: (1) All dogs *four* (4) [six (6)] months of age and older shall be vaccinated against rabies.

(2) Dogs initially vaccinated prior to one (1) year of age shall be revaccinated one (1) year later regardless of the type of vaccine used.

(3) Thereafter the period of time required for revaccination *shall be dependent upon the type of vaccine administered. The date of expiration shall be indicated on the vaccination certificate. The current revaccination recommendations of the National Association of State Public Health Veterinarians, Inc. may be utilized in determining expiration dates of vaccines.* [is extended to three (3) years provided vaccines certified to induce immunity of that duration are used. Dogs vaccinated with other types of vaccines shall be revaccinated annually.]

Section 3. Vaccination Tags. Vaccination tags shall reveal the type of vaccine administered. The word "live" shall be used to designate modified live virus vaccines of either chick embryo or of various tissue culture origins.

Section 4. Dogs Brought into State. All dogs brought into Kentucky, except those brought in for exhibition purposes for a period not to exceed *ten* (10) [thirty (30)] days, shall be vaccinated against rabies *and have a currently valid rabies vaccination certificate* [within six (6) months prior to date of entry].

Section 5. Destroying an Animal Exhibiting Positive Signs of Rabies. Dogs showing active signs of rabies or suspected of having rabies shall be confined under competent observation for such a time as may be necessary to determine a diagnosis as specified in KRS 258.085. If confinement is impossible or impracticable, such dog shall be destroyed. Whenever an animal exhibits positive signs of

rabies it shall be killed in such a manner as to preserve the brain intact. The animal shall not be shot or clubbed in the head nor shall strychnine or other chemical poisons be used. Wild animals suspected of rabies shall be sacrificed and their heads submitted to the laboratory immediately.

Section 6. Sending Heads of Ownerless Animals to the Laboratory. In the event the ownership of a rabies suspect animal is unknown, the expense of forwarding the head of the animal to the laboratory shall be borne by the local health department. Animal heads shall be submitted in a manner prescribed by the Department for Human Resources. Whole animals, dead or alive, shall not be accepted.

Section 7. Rabies Vaccination Permits for Owners and Operators of Licensed Kennels. (1) The Department for Human Resources may issue permits to owners and operators of licensed kennels to vaccinate dogs owned by them upon satisfactory passage of an examination prescribed by the department.

(2) The Department for Human Resources shall forthwith revoke any permit issued under this regulation upon finding that the permittee had vaccinated dogs not owned by him.

(3) Permits issued under this regulation shall authorize the use of inactivated (killed virus) vaccine only.

(4) Permits issued under this regulation may be renewed each year unless suspended, revoked or cancelled.

(5) No permit issued under this section shall create a permanent or vested property interest in the permittee, and same may be cancelled whenever the Department for Human Resources determines that a need no longer exists.

Section 8. Rabies Vaccination Permits for Qualified Persons. (1) In the event the rabies control program in a particular county is not being conducted to the satisfaction of the Department for Human Resources and the services of graduate licensed veterinarians are not available, unlicensed persons with veterinary medical experience may be selected and trained by the Department for Human Resources and issued temporary permits to vaccinate dogs against rabies.

(2) No permit issued under this section shall create a permanent or vested property interest in the permittee and same may be cancelled whenever the Department for Human Resources determines that a need no longer exists.

ROBERT S. SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 5, 1978

RECEIVED BY LRC: September 7, 1978 at 3:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary, Department for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(Proposed Amendment)

902 KAR 50:050. Manufacturing plant requirements.

RELATES TO: KRS 217C.010 to 217C.090

PURSUANT TO: KRS 13.082, 194.050, 211.090

NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate milk for manufacturing purposes. This regulation sets uniform sanitary and operational standards for manufacturing milk plants, receiving stations, transfer stations and handlers and provides for the issuance and revocation of permits relating thereto.

Section 1. Permits and Inspections. (1) No person shall operate a manufacturing milk plant, receiving station, transfer station or be a handler of manufacturing milk in this state who does not possess a valid permit as herein provided. Prior to the issuance of a permit, each plant, receiving station or handler shall be inspected by the department. Inspections shall be made at least annually thereafter.

(2) Only a person who is in satisfactory compliance with the requirements of this regulation shall be entitled to a permit. Permits shall not be transferable with respect to persons or locations and shall expire December 31, following the date of issuance.

(3) Manufactured milk and milk products from points beyond the limits of routine inspection of the Commonwealth of Kentucky, or its police jurisdiction, may be sold in the Commonwealth of Kentucky, or its police jurisdiction, provided they are produced and processed under regulations which are substantially equivalent to this regulation, and provided further, that the governmental unit concerned accepts Kentucky's manufacturing milk and milk products on a reciprocal basis.

(4) Properly prepared plans for all transfer stations, receiving stations and milk plants regulated under this regulation which are hereafter constructed, reconstructed or extensively altered, shall be submitted to the department for approval before work is begun.

Section 2. Requirements for Manufactured Milk Product Plants in Kentucky. The following regulations promulgated by the U.S. Department of Agriculture as set forth in the January 1, 1977, edition of the Code of Federal Regulations, Title 7, Part 58, Subpart 8, are hereby adopted by reference:

- (1) Section 58.101 Definitions, meaning of words.
- (2) Section 58.122 Purpose, approved plants under USDA inspection and grading service.
- (3) Section 58.123 approved plants, survey and approval.
- (4) Section 58.124 Denial or suspension of plant approval.
- (5) Section 58.125 Premises, buildings, facilities, equipment and utensils, premises.
- (6) Section 58.126 Buildings.
- (7) Section 58.127 Facilities.
- (8) Section 58.128 Equipment and utensils.
- (9) Section 58.129 Personnel, cleanliness and health, cleanliness.
- (10) Section 58.130 Health.
- (11) Section 58.131 Protection and transport of raw milk and cream, equipment and facilities.
- (12) Section 58.132 quality specifications for raw milk, basis for classification.

(13) Section 58.133 Methods for quality and wholesomeness determination.

(14) Section 58.134 Sediment Content.

(15) Section 58.135 Bacterial estimate.

(16) Section 58.136 Rejected milk.

(17) Section 58.137 Excluded milk.

(18) Section 58.138 Quality testing of milk from new producers.

(19) Section 58.139 Record of tests.

(20) Section 58.140 Field service.

(21) Section 58.141 Alternate quality control program.

(22) Section 58.142 Operations and operating procedures, product quality and stability.

(23) Section 58.143 Raw product storage.

(24) Section 58.144 Pasteurization or ultra-pasteurization.

(25) Section 58.145 Composition and wholesomeness.

(26) Section 58.146 Cleaning and sanitizing treatment.

(27) Section 58.147 Insect and rodent control program.

(28) Section 58.148 Plant records.

(29) Section 58.149 Alternate quality control programs for dairy products.

(30) Section 58.150 Packaging and general identification, containers.

(31) Section 58.151 Packaging and repackaging.

(32) Section 58.152 General identification.

(33) Section 58.153 Storage of finished product, dry storage.

(34) Section 58.154 Refrigerated storage.

(35) Section 58.155 Inspection, grading and official identification, grading.

(36) Section 58.156 Inspection.

(37) Section 58.157 Inspection or grading certificates.

(38) Section 58.158 Official identification.

(39) Section 58.159 Explanation of terms, terms.

(40) Section 58.205 Supplemental specifications for plants manufacturing, processing and packaging nonfat dry milk, instant nonfat dry milk, dry whole milk, and dry buttermilk, definitions, meaning of words.

(41) Section 58.210 Rooms and compartments, dry storage of product.

(42) Section 58.211 Packaging room for bulk products.

(43) Section 58.212 Hopper or dump room.

(44) Section 58.213 Repackaging room.

(45) Section 58.214 Equipment and utensils, general construction, repair and installation.

(46) Section 58.215 Pre-heaters.

(47) Section 58.216 Hotwells.

(48) Section 58.217 Evaporators and/or vacuum pans.

(49) Section 58.218 Surge tanks.

(50) Section 58.219 High pressure pumps and lines.

(51) Section 58.220 Drying systems.

(52) Section 58.221 Collectors and conveyors.

(53) Section 58.222 Dry dairy product cooling equipment.

(54) Section 58.223 Special treatment equipment.

(55) Section 58.224 Sifters.

(56) Section 58.225 Clothing and shoe covers.

(57) Section 58.226 Portable and stationary bulk bins.

(58) Section 58.227 Sampling device.

(59) Section 58.228 Dump hoppers, screens, mixers and conveyors.

(60) Section 58.229 Filler and packaging equipment.

(61) Section 58.230 Heavy duty vacuum cleaners.

(62) Section 58.231 Quality specifications for raw materials, general.

(63) Section 58.232 Milk.

(64) Section 58.233 Skim milk.

- (65) Section 58.234 Buttermilk.
- (66) Section 58.235 Modified dry milk products.
- (67) Section 58.236 Operations and operating procedures, pasteurization and heat treatment.
- (68) Section 58.237 Condensed surge supply.
- (69) Section 58.238 Condensed storage tanks.
- (70) Section 58.239 Drying.
- (71) Section 58.240 Cooling dry products.
- (72) Section 58.241 Packaging, repackaging and storage.
- (73) Section 58.242 Product adulteration.
- (74) Section 58.243 Checking quality.
- (75) Section 58.244 Number of samples.
- (76) Section 58.245 Method of official sample analysis.
- (77) Section 58.246 Cleaning of dryers, collectors, conveyors, ducts, sifters and storage bins.
- (78) Section 58.247 Insect and rodent control program.
- (79) Section 58.248 Requirements for finished products bearing USDA official identification, nonfat dry milk.
- (80) Section 58.249 Instant nonfat dry milk.
- (81) Section 58.250 Dry whole milk.
- (82) Section 58.251 Dry buttermilk.
- (83) Section 58.305 Supplemental specifications for plants manufacturing, processing and packaging butter and related products, definitions, meaning of words.
- (84) Section 58.311 Rooms and compartments, coolers and freezers.
- (85) Section 58.312 Churn rooms.
- (86) Section 58.313 Print and bulk packaging rooms.
- (87) Section 58.314 Equipment and utensils, general construction, repair and installation.
- (88) Section 58.315 Continuous churns.
- (89) Section 58.316 Conventional churns.
- (90) Section 58.317 Bulk butter trucks, boats, texturizers, and packers.
- (91) Section 58.318 Butter, frozen or plastic cream melting machines.
- (92) Section 58.319 Printing equipment.
- (93) Section 58.320 Brine tanks.
- (94) Section 58.321 Cream storage tanks.
- (95) Section 58.322 Quality specifications for raw material, cream.
- (96) Section 58.323 Whipped butter.
- (97) Section 58.324 Butteroil.
- (98) Section 58.325 Anhydrous milkfat.
- (99) Section 58.326 Plastic cream.
- (100) Section 58.327 Frozen cream.
- (101) Section 58.328 Salt.
- (102) Section 58.329 Color.
- (103) Section 58.330 Butter starter cultures.
- (104) Section 58.331 Starter distillate.
- (105) Section 58.332 Operations and operating procedures, segregation of raw material.
- (106) Section 58.334 Pasteurization.
- (107) Section 58.335 Quality control tests.
- (108) Section 58.336 Frequency of sampling for quality control of cream, butter and related products.
- (109) Section 58.337 Official test methods.
- (110) Section 58.338 Composition and wholesomeness.
- (111) Section 58.339 Containers.
- (112) Section 58.340 Printing and packaging.
- (113) Section 58.341 Repackaging.
- (114) Section 58.342 General identification.
- (115) Section 58.343 Storage of finished product in coolers.
- (116) Section 58.344 Storage of finished product in freezer.
- (117) Section 58.345 Requirements for finished products bearing USDA official identification, butter.
- (118) Section 58.346 Whipped butter.
- (119) Section 58.347 Butteroil or anhydrous milkfat.
- (120) Section 58.348 Plastic cream.
- (121) Section 58.349 Frozen cream.
- (122) Section 58.405 Supplemental specifications for plants manufacturing and packaging cheese, definitions, meaning of words.
- (123) Section 58.406 Rooms and compartments, starter facility.
- (124) Section 58.407 Make room.
- (125) Section 58.408 Brine room.
- (126) Section 58.409 Drying room.
- (127) Section 58.410 Paraffining room.
- (128) Section 58.411 Rindless cheese wrapping area.
- (129) Section 58.412 Coolers or curing rooms.
- (130) Section 58.413 Cutting and packaging rooms.
- (131) Section 58.414 Equipment and utensils, general construction, repair and installation.
- (132) Section 58.415 Starter vats.
- (133) Section 58.416 Cheese vats, tanks and drain tables.
- (134) Section 58.417 Mechanical agitators.
- (135) Section 58.418 Automatic cheese making equipment.
- (136) Section 58.419 Curd mill and miscellaneous equipment.
- (137) Section 58.420 Hoops, forms and followers.
- (138) Section 58.421 Press.
- (139) Section 58.422 Brine tank.
- (140) Section 58.423 Cheese vacuumizing chamber.
- (141) Section 58.424 Monorail.
- (142) Section 58.425 Conveyor for moving and draining block or barrel cheese.
- (143) Section 58.426 Rindless cheese wrapping equipment.
- (144) Section 58.427 Paraffin tanks.
- (145) Section 58.428 Speciality equipment.
- (146) Section 58.429 Washing machine.
- (147) Section 58.430 Quality specifications for raw material, milk.
- (148) Section 58.431 Hydrogen peroxide.
- (149) Section 58.432 Catalase.
- (150) Section 58.433 Cheese cultures.
- (151) Section 58.434 Calcium chloride.
- (152) Section 58.435 Color.
- (153) Section 58.436 Rennet, pepsin, other milk clotting enzymes and flavor enzymes.
- (154) Section 58.437 Salt.
- (155) Section 58.438 Operations and operating procedures, cheese from pasteurized milk.
- (156) Section 58.439 Cheese from unpasteurized milk.
- (157) Section 58.440 Make schedule.
- (158) Section 58.441 Records.
- (159) Section 58.442 Laboratory and quality control tests.
- (160) Section 58.443 Whey handling.
- (161) Section 58.444 Packaging and repackaging.
- (162) Section 58.445 General identification.
- (163) Section 58.446 Requirements for finished products bearing USDA official identification, quality requirements.
- (164) Section 58.505 Supplemental specifications for plants manufacturing and packaging cottage cheese, definitions, meaning of words.
- (165) Section 58.510 Rooms and compartments, rooms and compartments.
- (166) Section 58.511 Equipment and utensils, general construction, repair and installation.

- (167) Section 58.512 Cheese vats or tanks.
- (168) Section 58.513 Agitators.
- (169) Section 58.514 Container fillers.
- (170) Section 58.515 Mixers.
- (171) Section 58.516 Starter vats.
- (172) Section 58.517 Quality specifications for raw material, general.
- (173) Section 58.518 Milk.
- (174) Section 58.519 Dairy products.
- (175) Section 58.520 Nondairy ingredients.
- (176) Section 58.521 Operations and operating procedures, pasteurization and product flow.
- (177) Section 58.522 Reconstituting nonfat dry milk.
- (178) Section 58.523 Laboratory and quality control tests.
- (179) Section 58.524 Packaging and general identification.
- (180) Section 58.525 Storage of finished product.
- (181) Section 58.526 Requirements for cottage cheese bearing USDA official identification, official identification.
- (182) Section 58.527 Physical requirements.
- (183) Section 58.528 Microbiological requirements.
- (184) Section 58.529 Chemical requirements.
- (185) Section 58.530 Keeping quality requirements.
- (186) Section 58.605 Supplemental specifications for plants manufacturing, processing and packaging frozen desserts, definitions, meaning of words.
- (187) Section 58.619 Rooms and compartments, mix processing room.
- (188) Section 58.620 Freezing and packaging rooms.
- (189) Section 58.621 Freezing tunnels.
- (190) Section 58.622 Hardening and storage rooms.
- (191) Section 58.623 Equipment and utensils, homogenizer.
- (192) Section 58.624 Freezers.
- (193) Section 58.625 Fruit or syrup feeders.
- (194) Section 58.626 Packaging equipment.
- (195) Section 58.627 Quality specifications for raw material, milk and dairy products.
- (196) Section 58.628 Sweetening agents.
- (197) Section 58.629 Flavoring agents.
- (198) Section 58.630 Stabilizers.
- (199) Section 58.631 Emulsifiers.
- (200) Section 58.632 Acid.
- (201) Section 58.633 Color.
- (202) Section 58.634 operations and operating procedures, assembling and combining mix ingredients.
- (203) Section 58.635 Pasteurization of the mix.
- (204) Section 58.636 Homogenization.
- (205) Section 58.637 Cooling the mix.
- (206) Section 58.638 Freezing the mix.
- (207) Section 58.639 Addition of flavor.
- (208) Section 58.640 Packaging.
- (209) Section 58.641 Hardening and storage.
- (210) Section 58.642 Quality control tests.
- (211) Section 58.643 Frequency of sampling.
- (212) Section 58.644 Test methods.
- (213) Section 58.645 General identification.
- (214) Section 58.646 Requirements for finished products bearing USDA official identification, official identification.
- (215) Section 58.647 Composition requirements for ice cream.
- (216) Section 58.648 Microbiological requirements for ice cream.
- (217) Section 58.649 Physical requirements for ice cream.
- (218) Section 58.650 Requirements for frozen custard.
- (219) Section 58.651 Requirements for ice milk.
- (220) Section 58.652 Composition requirements for sherbet.
- (221) Section 58.653 Microbiological requirements for sherbet.
- (222) Section 58.654 Physical requirements for sherbet.
- (223) Section 58.705 Supplemental specifications for plants manufacturing, processing and packaging pasteurized process cheese and related products, definitions, meaning of words.
- (224) Section 58.706 Equipment and utensils, general construction repair and installation.
- (225) Section 58.707 Conveyors.
- (226) Section 58.708 Grinders or shredders.
- (227) Section 58.709 Cookers.
- (228) Section 58.710 Fillers.
- (229) Section 58.711 Quality Specifications for raw material, cheddar, colby, washed or soaked curd, granular or stirred curd cheese.
- (230) Section 58.712 Swiss.
- (231) Section 58.713 Gruyere.
- (232) Section 58.714 Cream cheese, Neufchatel cheese.
- (233) Section 58.715 Cream, plastic cream and anhydrous milkfat.
- (234) Section 58.716 Nonfat dry milk.
- (235) Section 58.717 Whey.
- (236) Section 58.718 Flavor ingredients.
- (237) Section 58.719 Coloring.
- (238) Section 58.720 Acidifying agents.
- (239) Section 58.721 Salt.
- (240) Section 58.722 Emulsifying agents.
- (241) Section 58.723 Operations and operating procedures, basis for selecting cheese for processing.
- (242) Section 58.724 Blending.
- (243) Section 58.725 Trimming and cleaning.
- (244) Section 58.726 Cutting and grinding.
- (245) Section 58.727 Adding optional ingredients.
- (246) Section 58.728 Cooking the batch.
- (247) Section 58.729 Forming containers.
- (248) Section 58.730 Filling containers.
- (249) Section 58.731 Closing and sealing containers.
- (250) Section 58.732 Cooling the packaged cheese.
- (251) Section 58.733 Quality control tests.
- (252) Section 58.734 Requirements for processed cheese products bearing USDA official identification, official identification.
- (253) Section 58.735 Quality specifications for raw materials.
- (254) Section 58.736 Quality specifications for finished products, pasteurized process cheese.
- (255) Section 58.737 Pasteurized process cheese food.
- (256) Section 58.738 Pasteurized process cheese spread and related products.
- (257) Section 58.805 Supplemental specifications for plants manufacturing, processing, and packaging whey, whey products and lactose, definitions, meaning of words.
- (258) Section 58.806 Rooms and compartments, general.
- (259) Section 58.807 Equipment and utensils, general construction, repair and installation.
- (260) Section 58.808 Quality specifications for raw materials, whey.
- (261) Section 58.809 Operations and operating procedures, pasteurization.
- (262) Section 58.810 Temperature requirements.
- (263) Section 58.811 General.

- (264) Section 58.812 Methods of official sample analysis.
- (265) Section 58.813 Requirements for finished products bearing USDA official identification, dry whey.
- (266) Section 58.905 Supplemental specifications for plants manufacturing, processing, and packaging evaporated, and condensed milk or ultra pasteurized products, definitions, meaning of words.
- (267) Section 58.912 Equipment and utensils, general construction, repair and installation.
- (268) Section 58.913 Evaporators and vacuum pans.
- (269) Section 58.914 Fillers.
- (270) Section 58.915 Batch or continuous in-container thermal processing equipment.
- (271) Section 58.916 Homogenizer.
- (272) Section 58.917 Operations and operating procedures, general.
- (273) Section 58.918 standardization.
- (274) Section 58.919 Pre-heat, pasteurization.
- (275) Section 58.920 Homogenization.
- (276) Section 58.921 Concentration.
- (277) Section 58.922 Thermal processing.
- (278) Section 58.923 Filling containers.
- (279) Section 58.924 Aseptic filling.
- (280) Section 58.925 Sweetened condensed.
- (281) Section 58.926 Heat stability.
- (282) Section 58.927 Storage.
- (283) Section 58.928 Quality control tests.
- (284) Section 58.929 Frequency of sampling for quality control.
- (285) Section 58.930 Official test methods.
- (286) Section 58.931 General identification.
- (287) Section 58.932 Quality specifications for raw materials, milk.
- (288) Section 58.933 Stabilizers.
- (289) Section 58.934 Sugars.
- (290) Section 58.935 Chocolate and cocoa.
- (291) Section 58.936 Requirements for finished products bearing USDA official identification, milk.
- (292) Section 58.937 Physical requirements for evaporated milk.
- (293) Section 58.938 Physical requirements and microbiological limits for sweetened condensed milk.
- (294) The Code of Federal Regulations containing the above referenced sections is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C., 20408. Copies of this publication shall be on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, 40601, and is open for public inspection. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

[Section 2. Examination of Milk and Dairy Products. (1) To assure that products produced by the manufacturing milk plants meet the department's standards of identity for manufacturing milk products, a representative sample of each finished product shall be collected and analyzed by the department annually or more often as the department deems necessary.]

[(2) Commingled plant raw milk or bulk tank samples shall be collected and analyzed in an official laboratory or an officially designated laboratory at a frequency deemed necessary by the department.]

[(3) Commingled samples from the raw milk receipts for the entire day or holdover milk from the previous day,

shall be collected and analyzed. The logarithmic average of the samples shall be considered the plant average for the date.]

[(4) A plant will be considered in compliance with this Section whenever the bacteriological quality of commingled milk does not exceed 10,000,000 in more than two (2) of the past four (4) tests performed. The frequency of testing shall be at least semi-annually.]

[(5) Whenever two (2) of the last three (3) bacterial analysis exceeds 10,000,000 a warning, in writing, shall be issued by the department, and the frequency of testing increased to at least once each three (3) months. This frequency of testing shall remain in effect until such time as two (2) of the last three (3) tests are less than 10,000,000 at which time the testing procedure outlined in subsection (4) shall be in effect.]

[(6) Whenever three (3) of the last four (4) bacterial analysis exceeds 10,000,000 the plant shall be given an opportunity for a hearing to show cause why its permit should not be suspended.]

[Section 3. General Sanitation Requirements for Manufacturing Milk Plants, Receiving Stations or Transfer Stations. The requirements of Sections 4 to 19 shall apply to all buildings in which manufacturing milk or milk products are transferred, received, stored, processed, packaged or otherwise held and the premises thereof and includes all equipment, utensils, containers and facilities.]

[Section 4. Premises. (1) Construction and maintenance of driveways and adjacent plant traffic areas shall be of concrete, asphalt, or similar material to keep the dust and mud to a minimum.]

[(2) The adjacent surroundings shall be free from refuse, rubbish and waste materials to prevent harborage of rodents, insects, and other vermin.]

[(3) A suitable drainage system shall be provided which will allow rapid drainage of all water from plant buildings and driveways, including surface water around the plant and on the premises, and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard.]

[Section 5. Construction and Maintenance. (1) The floors shall be constructed of tile, concrete or equally impervious material, kept in smooth and good repair, graded so that there will be no pools of standing water or milk products after flushing, and all openings to the drains shall be equipped with traps properly constructed and kept in good repair.]

[(2) On new construction bell-type traps shall not be used. The plumbing shall be so installed as to prevent the backup of sewage into the drain lines and to the floor of the plant.]

[(3) Sound, smooth wood floors which can be kept clean, may be used in rooms where new containers and supplies and certain packaged finished products are stored.]

[(4) The walls and ceilings shall be smoothly finished with a suitable material of light color, which is relatively impervious to moisture.]

[(5) All openings to the outer air including doors, windows, skylights and transoms shall be effectively protected or screened against the entrance of flies and other insects, rodents, birds, dust and dirt.]

[(6) All rooms shall have at least thirty (30) foot-candles of light intensity on all working surfaces and at least fifty (50) foot-candles of light intensity in areas where dairy pro-

ducts are graded or examined for condition and quality. Other rooms shall be provided with at least five (5) foot-candles of light intensity when measured at a distance of thirty (30) inches from the floor.]

[(7) Where contamination of product by broken glass is possible, light bulbs, fluorescent tubes, fixtures, skylight, or other glass suspended over the product shall be protected against breakage.]

[(8) Exhaust or inlet fans, vents, hoods or temperature and humidity control facilities shall be provided where and when needed, to minimize or eliminate undesirable room temperatures, objectionable odors, moisture condensation, or mold.]

[(9) Inlet fans shall be provided with an adequate air filtering device to eliminate dirt and soot from the incoming air.]

[Section 6. Rooms and Compartments. Separate rooms shall be provided as follows: (1) Receiving Room (Can Milk). If raw can milk is received the receiving room shall be separated from the processing room by a partition (partial or complete).]

[(2) Bulk Tank Truck Wash-Up and Unloading Facilities. If bulk milk is received, a bulk tank truck wash-up facility shall be provided at the receiving location or other suitable locations approved by the department. A minimum of overhead protection and three (3) sides shall be provided. Bulk tank trucks shall be unloaded in an approved facility or an approved truck manhole filter shall be provided.]

[(3) Processing and Packaging Rooms. All processing and packaging rooms shall be separated and arranged in such a way to allow for an orderly sanitary operation.]

[(4) Coolers and Freezers. Coolers and freezers where dairy products are stored shall be reasonably dry and maintained at the proper uniform temperature and humidity to adequately protect the product and minimize the growth of mold. Adequate circulation of air shall be maintained at all times.]

[(5) Supply Room. The supply rooms used for the storing of packaging materials, containers, and miscellaneous ingredients shall be so arranged to permit access to the supplies and for cleaning and inspection of the room.]

[(6) Boiler and Tool Rooms. The boiler and tool room shall be separated from other rooms where milk and dairy products are processed, manufactured, packaged, handled or stored.]

[(7) Toilet and Dressing Rooms. Adequate toilet and dressing room facilities shall be conveniently located, adequately ventilated, and provided with solid self-closing doors. Toilet rooms shall not open directly into any room in which milk or dairy products are processed, manufactured, packaged or stored. Handwashing sign shall be posted conspicuously in each toilet or dressing room directing employees to wash their hands before returning to work.]

[(8) Laboratory. Consistent with the size and type of plant and the volume of dairy product manufactured or received, an approved laboratory shall be maintained and properly staffed with qualified and trained personnel for quality control and analytical testing for those tests required by this regulation. A central laboratory serving more than one (1) plant may be acceptable if conveniently located to the dairy plants and if samples and results can be transmitted without undue delay.]

[Section 7. Water Supply. (1) There shall be an ample hot and cold water of sanitary quality, adequately

distributed throughout the plant and protected against contamination.]

[(2) Water from other approved sources may be used for boiler fed water and condenser water provided that such water lines are completely separated from the water lines carrying the sanitary water supply, and the equipment is so constructed and controlled as to preclude contamination of product contact surfaces.]

[(3) Bacteriological examination shall be made of the sanitary water supply at least twice a year, or as often as necessary to determine purity and suitability for use in manufacturing dairy products. Tests shall be made by the department except for supplies that are regularly tested for purity and bacteriological quality, and approved by the Department for Natural Resources and Environmental Protection.]

[(4) The location, construction and operation of any private well shall be approved by the department and the results of all water tests from private supplies shall be kept on file at the plant for which the test was performed.]

[(5) Drinking water facilities of a sanitary type shall be provided in the plant and shall be conveniently located.]

[Section 8. Handwashing Facilities, Steam and Air Under Pressure. (1) Facilities including hot and cold water, soap or other detergents and sanitary single-service towels or air dryers, shall be located in or adjacent to toilet and dressing rooms and also at such other places in the plant as may be essential to the cleanliness of all personnel handling products.]

[(2) Vats for washing equipment or utensils shall not be used as handwashing facilities.]

[(3) Self-closing metal or plastic container shall be provided for used towels and other wastes.]

[(4) Steam. Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Culinary steam used in direct contact with milk or dairy products shall comply with the recommended practices for "Producing Culinary Steam for Processing Milk and Milk Products."]

[(5) Air Under Pressure. The method for supplying air under pressure which comes in contact with milk or dairy products or any product contact surface shall comply with the 3-A accepted practices for supplying air under pressure.]

[Section 9. Milk Plant Cleanliness. (1) All rooms shall be kept clean, neat and free of evidence of insects and rodents.]

[(2) Only equipment directly related to processing operations or the handling of containers, utensils and equipment is permitted in the pasteurizing, processing, cooling, packaging and bulk milk storage rooms.]

[(3) The outside of all piping, other equipment, shelves, tables, fans and etc. shall be kept relatively clean.]

[(4) Can washers and similar equipment shall be kept clean and free from accumulations of scale or debris.]

[(5) Plant waste shall be kept in covered containers and disposed of in a sanitary manner.]

[(6) Pesticides shall be safely used and properly stored.]

[Section 10. Construction, Repairs, and Installation of Equipment, Containers and Utensils. (1) The equipment and utensils used for the processing, handling or storage of milk and milk products shall be constructed to be readily demountable where necessary for cleaning and sanitizing. The product contact surfaces of all utensils and equipment such as holding tanks, pasteurizers, coolers, vats,

agitators, pumps, homogenizers, vacuum equipment, sanitary piping and fittings or any other specialized equipment shall meet 3-A sanitary standards unless otherwise specified in this regulation. Equipment or utensils for which there are no 3-A sanitary standards shall meet the approval of the department. The construction, repair, installation and operation of equipment and utensils specified in this regulation which were in use prior to the effective date of this regulation may not be required to meet 3-A sanitary standards, provided the equipment and utensils are in good repair and satisfactory for their intended use. Provided, further, that all new or replacement equipment and utensils shall meet 3-A sanitary standards, if applicable.]

[(2) All CIP systems shall comply with the 3-A sanitary practices for permanently installed sanitary products, pipelines and cleaning systems.]

[(3) All equipment and utensils shall be kept in good repair.]

[(4) Can Washers. Can washers shall have sufficient capacity and ability to discharge a clean, dry can and cover and shall be kept properly timed in accordance with the instructions of the manufacturer. The water and steam lines supplying the washer shall maintain a reasonably uniform pressure and if necessary be equipped with pressure regulating valves.]

[(5) Product Storage Tanks or Vats. Storage tanks or vats shall be fully enclosed or tightly covered and well insulated. This shall not preclude the use of air vents if properly protected. Any opening at the top of the tank or vat, including the entrance of the shaft, shall be suitably protected against the entrance of dust, moisture, insects, oil or grease. The sight glasses, if used, shall be clean and in good repair. Vats which have hinged covers shall be so designed that moisture or dust on the surface cannot enter the vat when the covers are raised. If the storage tanks or vats are equipped with air agitation, the system shall be of an approved type and properly installed in accordance with the 3-A accepted practices for supplying air under pressure. Storage tanks or vats intended to hold product for longer than approximately eight (8) hours shall be equipped with adequate refrigeration or have adequate insulation. All storage tanks shall be emptied and cleaned at least every seventy-two (72) hours. All new storage tanks or vats shall meet the appropriate 3-A sanitary standards and shall be equipped with the thermometers in good operating order. Recording thermometers shall be required on all new silo type storage tanks.]

[(6) Pasteurizers. In addition to meeting 3-A sanitary standards, the timing pump or device and the recorder controller shall be sealed by the department at the correct setting to assure pasteurization. All pasteurization units shall be tested initially upon installation and whenever any alteration or replacement is made which affects the operation and at least annually thereafter.]

[Section 11. Cleaning and Sanitizing of Equipment and Containers. (1) The equipment, sanitary piping and utensils used in receiving and processing of the milk, and manufacturing and handling of the product shall be maintained in a sanitary condition. Sanitary seal assemblies shall be removable on all agitators, pumps and vats, and shall be inspected at regular intervals and kept clean. Unless other provisions are recommended in the following Section, all equipment not designed for CIP cleaning shall be disassembled after each day's use for thorough cleaning. All product contact surfaces shall be subject to an ef-

fective sanitizing treatment immediately prior to use, except where dry cleaning is permitted.]

[(2) Dairy cleaners, detergents, wetting agents, sanitizing agents or other similar materials which will not contaminate or adversely affect the products may be used. Steel wool or metal sponges shall not be used in the cleaning of any dairy equipment or utensils.]

[(3) CIP cleaning, including spray-ball systems, shall be used only on equipment and pipeline systems which have been designed and engineered for that purpose. All caps, plugs, special fittings, valve seats, cross ends, pumps, plates and tee ends shall be opened or removed and brushed clean. Immediately prior to starting the product flow, the product contact surfaces shall be given bactericidal treatment.]

[(4) Milk transport tanks, sanitary pipings, fittings and pumps shall be cleaned and sanitized at least once each day, after use, provided, that if they are not to be used immediately after emptying a load of milk, they shall be washed promptly after use and given bactericidal treatment before reuse.]

[Section 12. Storage of Cleaned Containers and Equipment. After cleaning, all multi-use milk or milk product containers, utensils and equipment shall be transported and stored to assure complete drainage or stored in bactericidal solutions and shall be protected from contamination before use.]

[Section 13. Storage of Single-Service Containers, Utensils and Materials. Single-service liners, papers, gaskets, containers and other single-service articles for use in contact with milk and milk products shall be purchased and stored in sanitary containers; shall be stored in a clean, dry place until used; and shall be handled in a sanitary manner.]

[Section 14. Protection from Contamination. (1) Raw Product Storage. All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration. Drip milk from can washers or any other source shall not be used for the manufacture of dairy products.]

[(2) Storage of Finished Product. The product shall be stored in such a manner as to be orderly and easily accessible for inspection and cleaning of the storage rooms. Rooms should be cleaned regularly. Care shall be taken in the storage of any other product foreign to dairy products in the same room in order to prevent impairment or damage to the product from mold, absorbed odors, or vermin or insect infestation. Control of humidity and temperature shall be maintained at all times, consistent with good commercial practices, to prevent conditions detrimental to the product and container.]

[(3) Refrigerated Storage. The finished product shall be placed on shelves, dunnage, pallets or other approved methods and properly identified. It shall be stored under temperatures that will best maintain the initial quality. The product shall not be exposed to anything from which it might absorb any foreign odors or be contaminated by dripage or condensation.]

[(4) Transfer of Milk from Bulk Tank Trucks. Milk shall be transferred under sanitary conditions from bulk tank trucks through stainless steel piping or approved tubing.]

[Section 15. Cooling. All raw milk within the plant

storage tanks shall be maintained at 50 degrees or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices.]

[Section 16. Packaging and Repackaging. Packaging dairy products or cutting and repackaging all styles of dairy products shall be conducted under rigid sanitary conditions. The atmosphere of the packaging rooms, the equipment and packaging material shall be practically free from mold and bacterial contamination. Methods for checking the level of contamination shall be as prescribed by the standard methods.]

[Section 17. Personnel Cleanliness. All employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking or otherwise soiling their hands. Employees shall follow good hygienic practices while on duty. Expectorating or use of tobacco in any form shall be prohibited in each room and compartment where any milk, dairy product, or supplies are prepared, stored or otherwise handled. Clean white or light colored washable or disposable outer garments and caps (paper caps, hair nets or safety hats are acceptable) shall be worn by all persons engaged in receiving, testing, processing milk, manufacturing, packaging or handling dairy products.]

[Section 18. Personal Health. No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infested wounds, sores, or an acute respiratory infection, shall work in any area of a plant, receiving station, transfer station or be a handler of manufacturing milk, in any capacity in which there is a likelihood of such person contaminating milk or milk contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the plant, receiving station, transfer station or handler has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the department immediately. Provided, further, the department may require a physical examination and laboratory test if infection or disease is suspected.]

[Section 19. Plant Records. Adequate plant records shall be maintained of all required tests on all raw milk receipts. Such records shall be available for examination at all reasonable times by the inspector. These records shall include: (1) Quality test results on raw milk from each producer including routine tests and monthly summary showing number and percent of total in each class, retest and rejections of raw milk. Such records shall be maintained for the previous twelve (12) months.]

[(2) Pasteurization recorder charts; CIP work-up charts and cooler recorder charts. Such records shall be retained for six (6) months.]

[(3) Water Supply test results from private systems. The current copy shall be retained for six (6) months.]

[Section 20. Supplemental Requirements for Plants Manufacturing Processing and Packaging Cheese. The requirements of this Section shall apply to all plants manufacturing, processing and packaging cheese: (1) Starter Vats. Bulk starter vats shall be of stainless steel or

equally corrosion-resistant metal and shall be in good repair, equipped with tight fitting lids and have adequate temperature controls such as valves, indicating or recording thermometers.]

[(2) Cheese Vats. The vats used for making cheese shall be of metal construction with adequate jacket capacity for uniform heating. The inner liner shall be minimum sixteen (16) gauge stainless steel or other equally corrosion-resistant metal, properly pitched from side to center and from rear to front for adequate drainage. The liner shall extend over the edge of the outer jacket. The junction of the liner and outer jackets shall be constructed so as to prevent milk or cheese from entering the inner jacket.]

[(3) Mechanical Agitators. The mechanical agitators shall be of sanitary construction. The carriage and track shall be constructed as to prevent the dropping of dirt or grease into the vat. All new or replaced carriages and tracks shall be completely enclosed. Each plant shall have a replacement program in effect for all carriages and tracks not completely enclosed.]

[(4) Hoops and Followers. The hoops, forms and following shall be constructed of stainless steel or heavy tinned steel. If tinned, they shall be kept tinned and free from rust.]

[(5) Press. All parts of the cheese press which come in contact with the product shall be constructed of stainless steel. The pressure device shall be the continuous type. Press cloths shall be maintained in good repair and in a sanitary condition. Single-service press cloths shall be used only once.]

[(6) Rindless Cheese Press. The press used to heat seal the wrapper applied to rindless cheese shall have square interior corners, reasonably smooth interior surface and have controls that shall provide uniform pressure and heat equally to all surfaces.]

[(7) Paraffin Tanks. The metal tank shall be adequate in size, may have wood or other approved material, rather than metal racks to support the cheese, have heat controls and an indicating thermometer.]

[(8) Cookers. The cookers shall be the steam jacketed or direct steam type. They shall be constructed of stainless steel or other equally corrosion-resistant material. Each cooker shall be equipped with an indicating thermometer and should be equipped with a temperature recording device. The recording thermometer stem may be placed in the cooker if satisfactory time charts are used; if not, the stem shall be placed in the hotwell or filler hopper. Steam check valves on direct steam type cookers shall be mounted flush with cooker wall, be constructed of stainless steel and designed to prevent the backup of product into the steamline, or the steamline shall be constructed of stainless steel pipes and fittings which can be readily cleaned.]

[(9) Fillers. The hoppers of all fillers shall be covered if practical but the cover may have sight ports. If necessary, the hopper may have an agitator to prevent buildup on side wall.]

[(10) Trimming and Cleaning. The natural cheese shall be cleaned free of all nonedible portions. Paraffin and bandages as well as rind surface, mold, or unclean areas or any other part which is unwholesome or unappetizing shall be removed.]

[(11) Cooking the Batch. Each batch of cheese within the cooker, including the optional ingredients shall be thoroughly commingled and the contents pasteurized at a temperature of at least 158 degrees and held at that temperature for not less than thirty (30) seconds. Care shall be taken to prevent the entrance of cheese particles or ingredients after the cooker batch of cheese has reached the

final heating temperature. After holding for the required period of time, the hot cheese shall be emptied from the cooker as quickly as possible.]

[(12) Forming Containers. Containers either lined or unlined shall be assembled and stored in a sanitary manner to prevent contamination. The handling of containers by filler crews shall be done with extreme care and observance of personal cleanliness. Performing and assembling of pouch liners and containers shall be kept to a minimum and the supply rotated to limit the length of time exposed to possible contamination prior to filling.]

[(13) Filling Containers. Hot fluid cheese from the cookers may be held in hotwells or hoppers to assure a constant and even supply of processed cheese to the filler or slice former. Filler valves shall effectively measure the desired amount of product into the pouch of containers in a sanitary manner and shall cut off sharply without drip or drag of cheese across the opening. An effective system shall be used to maintain accurate and precise weight control. Damaged or unsatisfactory packages shall be removed from production, and the cheese may be salvaged into sanitary containers and added back to cookers.]

[(14) Closing and Sealing Containers. Pouches, liners or containers having product contact surfaces after filling shall be folded or closed and sealed in a sanitary manner, preferably by mechanical means, so as to assure against contamination. Each container in addition to other required labeling shall be coded in such a manner as to be easily identified as to date of manufacture by lot or subplot number.]

[(15) Packaging and Repackaging. Packaging rindless cheese or cutting and repackaging all styles of bulk cheese shall be conducted under rigid sanitary conditions. The atmosphere of the packaging rooms, the equipment and the packaging material shall be practically free from mold and bacterial contamination.]

[(16) Whey Disposal. Adequate sanitary facilities shall be provided for the disposal of whey. If outside disposal facilities are used, necessary precautions shall be taken to minimize flies, insects and development of objectionable odors. Whey or whey products intended for human food shall at all times be handled in a sanitary manner in accordance with the procedures specified in this regulation for handling milk and dairy products.]

[Section 21. Supplemental Requirements for Plants Manufacturing, Processing and Packaging Evaporated, Condensed, Ultra-Pasteurized or Sterilized Milk Products. The requirements of this Section shall apply to all plants manufacturing, processing and packaging evaporated, condensed, ultrapasteurized or sterilized milk products: (1) Evaporators and Vacuum Pans. All equipment used in the removal of moisture from milk or milk products for the purpose of concentrating the solids should meet the requirements for 3-A sanitary standards for milk and milk products evaporators and vacuum pans. All new or used replacements for this type of equipment shall meet the appropriate 3-A sanitary standards.]

[(2) Fillers. Both gravity and vacuum type fillers shall be of sanitary design and all product contact surfaces, if metal, shall be made of stainless steel or equally corrosion-resistant material, except that certain evaporated milk fillers having brass parts may be approved if free from corroded surfaces and kept in good repair. Nonmetallic product contact surfaces shall meet the requirements for 3-A sanitary standards for rubber and rubber like materials or for multiple-use-plastic materials. Fillers shall be designed

so that they in no way will contaminate or detract from the quality of the product being packaged.]

[(3) Batch or Continuous In-Container Sterilizers. Batch or continuous in-container sterilizers shall be equipped with accurate temperature controls and effective valves for regulating the sterilization process. The equipment shall be maintained in such a manner as to assure control of the length of time of processing and to minimize the number of damaged containers.]

[(4) Small Containers. The filling of small containers with product shall be done in a sanitary manner. The containers shall not contaminate or detract from the quality of the product in any way. After filling, the container shall be hermetically sealed.]

[(5) Bulk Containers. Bulk containers for unsterilized product shall be suitable and adequate to protect the product in storage or transit. The bulk container (including bulk tankers) shall be cleaned and sanitized before filling, and filled and closed in a sanitary manner.]

[(6) Aseptic Filling. A previously sterilized product shall be filled under conditions which prevent contamination of the product by living organisms or spores. The containers prior to being filled shall be sterilized and maintained in a sterile condition. The containers shall be sealed in a manner that prevents contamination of the product.]

[Section 22. Supplemental Requirements for Plants Manufacturing, Processing and Packaging Instant Nonfat Dry Milk, Nonfat Dry Whole Milk, Dry Buttermilk, Dry Whey and Other Dry Milk Products. The requirements of Sections 23 to 33 shall apply for plants manufacturing instant nonfat dry milk, nonfat dry milk, dry whole milk, dry buttermilk, dry whey and other dry milk products.]

[Section 23. Preheaters. The preheaters shall be of stainless steel or other equally corrosion-resistant material, cleanable, accessible for inspection and shall be equipped with suitable automatic temperature controls.]

[Section 24. Hotwells. The hotwells shall be enclosed or covered and equipped with indicating thermometers either in the hotwell or in hot milk inlet line to the hotwell and if used for holding high heat products they should also have recorders.]

[Section 25. Evaporators or Vacuum Pans. Open type evaporators or vacuum pans shall be equipped with an automatic condenser water level control, barometric leg, or so constructed so as to prevent water from entering the product, and should meet the applicable 3-A sanitary standards. When enclosed type condensers are used, no special controls are needed to prevent water from entering the product.]

[Section 26. Surge Tanks. If surge tanks are used for hot milk and temperature of product, including foam, being held in the surge tank during processing is not maintained at a minimum of 150 degrees then two (2) or more surge tanks shall be installed with cross connections to permit flushing and cleaning during operating. Covers easily removable for cleaning shall be provided and used at all times.]

[Section 27. High Pressure Pumps and Lines. High pressure lines may be cleaned in place and shall be of such construction that deadends, valves and the high pressure pumps can be disassembled for hand cleaning.]

[Section 28. Spray Dryers. Spray dryers shall be of a continuous discharge type and all product contact surfaces shall be of stainless steel or other equally corrosion-resistant material. Sight glasses or ports of sufficient size shall be located at strategic and exhaust recording thermometers. The filter system shall consist of filtering media or devices that will effectively, and in accordance with good commercial practices, prevent the entrance of foreign substances into the drying chamber. The filtering system shall be cleaned or component parts replaced as often as necessary to maintain a clean and adequate air supply. In gas-fired dryers, precautions shall be taken to assure complete combustion. Air shall be drawn into the dryer from sources free from objectionable odors and smoke, dust or dirt.]

[Section 29. Roller Dryers. The drums of a roller dryer shall be smooth, readily cleanable and free of pits and rust. The knives shall be maintained in such conditions so as not to cause scoring of the drums. The end boards shall have an impervious surface and be readily cleanable. They shall be provided with a means of adjustment to prevent leakage and accumulation of milk solids. The stack, hood and the drip pan inside of the hood and related shields shall be constructed of stainless steel. The lower edge of the hood shall be constructed so as to prevent condensate from entering the product zone. The hood shall be properly located and the stack of adequate capacity to remove the vapors. The stack shall be closed when the dryer is not in operation. The augers shall be of stainless steel or properly plated, and readily cleanable. The auger troughs and related shields shall be of stainless steel. All air entering the dryer room shall be filtered to eliminate dust and dirt. The filter system shall consist of filtering media or device that will effectively and in accordance with good commercial practices, prevent the entrance of foreign substance into the drying room. The filtering system shall be cleaned or component parts replaced as often as necessary to maintain a clean and adequate air supply. All dryer adjustments shall be made and the dryer operating normally before food grade powder can be collected from the dryer.]

[Section 30. Collectors and Conveyors. Collectors and conveyors shall be made of stainless steel or equally non-corrosive material. Filter sack collectors, if used, shall be in good condition and the system shall be of such construction that all parts are accessible for cleaning and inspection.]

[Section 31. Dry Dairy Product Cooling Equipment. Cooling equipment shall be provided with sufficient capacity to cool the product to 110 degrees or lower immediately after removal from dryer and prior to packaging. If bulk bins are used, the product should be cooled to approximately 90 degrees, but shall be not more than 110 degrees. A suitable dry air supply with effective filtering shall be provided where air cooling and conveying is used.]

[Section 32. Special Treatment Equipment. (1) Sanitary Construction. All special equipment such as instantizing systems, flakers, pulverizers or hammer mills used to further process dry milk products shall be of sanitary construction.]

[(2) Sifters. All sifters shall be constructed of stainless steel or other equally non-corrosive material. The mesh size of sifter screen used for various dry dairy products shall be those recommended in the appendix of the 3-A standard for sifters.]

[(3) Portable and Stationary Bulk Bins. Bulk bins shall be constructed of stainless steel, aluminum or other equally corrosion-resistant material.]

[(4) Automatic Sampling Device. If automatic sampling devices are used, they shall be constructed in such a manner as to prevent contamination of the product.]

[(5) Dump Hoppers, Screens, Mixers and Conveyors. The product contact surfaces of dump hoppers, screens, mixers and conveyors which are used in the process of transferring dry products from bulk containers to fillers for small packages or containers, shall be of stainless steel or equally corrosion-resistant material and designed to prevent contamination. The dump hoppers shall be of such height above floor level as to prevent foreign material or spilled product from entering the hopper.]

[(6) Filler and Packaging Equipment. All filling and packaging equipment shall be of sanitary construction.]

[(7) Heavy Duty Vacuum Cleaners. Each plant handling dry milk products shall be equipped with a heavy duty industrial vacuum cleaner. Regular scheduling shall be established for its use in vacuuming applicable areas.]

[(8) Clothing and Shoe Covers. Clean clothing and shoe covers shall be provided exclusively for the purpose of cleaning the interior of the dryer when it is necessary to enter the dryer to perform the cleaning operation.]

[Section 33. Operations and Operating Procedures. (1) Pasteurization. All milk, buttermilk, and whey used in the manufacture of dry dairy products shall be pasteurized at the plant where dried, except that condensed whey and acidified buttermilk containing forty (40) percent or more solids may be transported to another plant for drying without repasteurization. Milk or skim milk to be used in the manufacture of nonfat dry milk shall be heated prior to condensing to at least the minimum pasteurization temperature. Condensed skim milk made for pasteurized skim milk may be transported to a drying plant, provided that it shall be effectively repasteurized at the drying plant prior to drying.]

[(2) Buttermilk or Cream. All buttermilk or cream from which it is derived shall be pasteurized prior to condensing.]

[(3) Cheese Whey. All cheese whey shall be pasteurized prior to condensing.]

[(4) Condensed Surge Supply. Surge tanks or balance tanks if used between the evaporators and dryer shall be used to hold only the minimum amount of condensed product necessary for a uniform flow to the dryers. Such tanks holding product at temperatures below 150°F shall be completely emptied and washed after each four (4) hours of operation or less. Alternate tanks shall be provided to permit continuous operating during washing of tanks.]

[(5) Condensed Storage Tanks. Excess production of condensed product over that which the dryer will take continuously from the pans should be bypassed through a cooler into a storage tank at 50°F or lower and held at this temperature until used. Product cut-off points shall be made at least every twenty-four (24) hours and the tank completely emptied, washed and sanitized before reuse.]

[(6) Drying. Each dryer should be operated at not more than the manufacturer's rated capacity for the highest quality dry product consistent with the most efficient operation. This does not preclude the remodeling or redesigning of dryers after installation when properly engineered and designed. The dry products shall be removed from the drying chamber continuously during the drying process.]

[(7) Cooling Dry Products. Prior to packaging and im-

mediately following removal from the drying chamber the dry product shall be cooled to a temperature not exceeding 110°F.]

[(8) Packaging, Repackaging and Storage Containers. In no instance will containers which have previously been used for nonfood items or food which would be deleterious to the dairy product be allowed to be used for the bulk handling of dairy products.]

[(9) Filling. Containers which are to be lined shall not be prepared more than one (1) hour in advance of filling. Every precaution shall be taken during the filling operation to minimize product dust and spillage. When necessary, a mechanical shaker shall be provided, the tapping or pounding of containers shall be prohibited. The containers shall be closed immediately after filling and the exteriors shall be vacuumed or brushed when necessary to render them practically free of product remnants before transferred from the filling room to the palleting or dry storage areas.]

[(10) Repackaging. All exterior surfaces of individual containers shall be practically free of product before overwrapping or packing in shipping containers. Conveyors, packaging and carton making equipment shall be vacuumed frequently during the operating day to prevent the accumulation of dust. No bottles or glass materials of any kind shall be permitted in the repacking or hopper room. The inlet openings of all hoppers and bins shall be of minimum size, screened and placed well above the floor level. A thorough cleanup including windows, doors, walls, light fixtures and ledges shall be performed as frequently as is necessary to maintain a high standard of cleanliness and sanitation. All waste dry dairy products including dribble product at the fillers shall be properly identified and disposed of as animal feed.]

[Section 34. Supplemental Requirements for Plants Manufacturing, Processing and Packaging Butter and Related Products. The requirements of this Section shall apply for plants manufacturing, processing and packaging butter and related products: (1) Continuous Churn. All product contact surfaces shall be of non-corrosive material. All nonmetallic product contact surfaces shall comply with 3-A standards for plastic, rubber and rubberlike materials.]

[(2) Conventional Churn. Churns shall be constructed of aluminum, stainless steel or equally corrosion-resistant metal. All gasket material shall be fat resistant, nontoxic and reasonably durable. Seals around the doors shall be tight.]

[(3) Bulk Butter Trucks, Boats and Packers. Bulk butter trucks, boats and packers shall be constructed of aluminum, stainless steel or equally corrosion-resistant material.]

[(4) Butter, Frozen or Plastic Cream Melting Machine. Shavers, shredders or melting machines, used for rapid melting of butter, frozen or plastic cream, shall be of stainless steel or equally corrosion-resistant metal.]

[(5) Printing Equipment. All product contact surfaces shall be aluminum, stainless steel or equally corrosion-resistant metal, or plastic, rubber and rubberlike material which meets 3-A standards, except that conveyors may be constructed of material which can be properly cleaned and maintained in a satisfactory manner.]

[(6) Brine Tanks. Brine tanks used for the treating of parchment liners shall be constructed of noncorrosive material and have an adequate and safe means of heating the salt solution for the treatment of the liners. The tanks shall also be provided with a satisfactory drainage outlet.]

[(7) Starter Vats. Bulk starter vats shall be of stainless

steel or equally corrosion-resistant metal and constructed according to applicable 3-A sanitary standards.]

[(8) Pasteurization. The milk or cream shall be pasteurized at the plant where the milk or cream is processed into the finished product.]

[(9) Caps and Covers. Caps or covers which extend over the lip of the containers shall be used on all cups or tubs containing two pounds or less to protect the product from contamination during subsequent handling.]

[(10) Liners and Wrappers. Prior to use, parchment liners for bulk butter packages shall be completely immersed in a boiling salt solution in a suitable container constructed of stainless steel or other equally noncorrosive material. The liners shall be maintained in a solution for not less than thirty (30) minutes. The solution shall consist of at least fifteen (15) pounds of salt for every eighty-five (85) pounds of water and shall be strengthened or changed as frequently as necessary to keep the solution full strength and in good condition. Other liners such as polyethylene shall be treated or handled in such a manner as to prevent contamination of the liner prior to filling.]

[(11) Storage of Finished Product in Coolers. All products shall be kept under refrigeration at temperatures of 40 degrees or lower after packaging until ready for distribution or shipment.]

[(12) Sharp Freezers. Plastic cream or frozen cream intended for storage shall be placed in quick freezer rooms immediately after packaging, for rapid and complete freezing within twenty-four (24) hours. The packages shall be piled or spaced in such a manner that air can freely circulate between and around the packages. The rooms shall be maintained at minus 10 degrees or lower and shall be equipped to provide sufficient high-velocity air circulation for rapid freezing. After the products have been completely frozen, they may be transferred to a freezer storage room for continued storage.]

[(13) Freezer Storage. The room shall be maintained at a temperature of zero degrees or lower. Adequate air circulation is desirable. Butter intended to be held more than thirty (30) days shall be placed in a freezer room as soon as possible after packaging. If not frozen before being placed in the freezer, the packages shall be spaced in such a manner as to permit rapid freezing and repiled, if necessary, at a later time.]

Section 3. [35.] Prohibited Acts Relating to Manufacturing Milk Plants, Receiving Stations, Transfer Stations and Handlers. The following acts and the causing thereof within the Commonwealth of Kentucky are hereby prohibited:

(1) No person shall process, handle, sell or offer for sale any milk or milk products for manufacturing purposes within this state without a permit as provided in this regulation.

(2) No person shall within this state process, handle, provide, sell, offer or expose for sale, or have in possession with intent to sell any milk or milk product for manufacturing purposes which is adulterated, misbranded or otherwise in violation of this regulation.

(3) No person shall prohibit entry or inspection, or prohibit the taking of a sample or prohibit access to records or evidence, to duly authorized agents of the department.

(4) No person shall remove, destroy, alter, forge or falsely represent, without proper authority any tag, stamp, mark or label used by the department.

(5) No person shall remove or dispose of a detained or quarantined article without proper authority from the department.

Section 4. [36.] Manufacturing Milk Plant, Receiving Station, Transfer Station and Handler Permit Suspension and Reinstatement.

(1) Permits issued under this regulation may be suspended, whenever the department has reason to believe that a public health hazard exists; or whenever the permit holder has violated any of the requirements of this regulation; or whenever the permit holder has interfered with the department in the performance of its duties. Provided, that the department shall, in all cases except where the milk or milk products involved creates, or appears to create, an imminent hazard to the public health; or in any case of a willful refusal to permit authorized inspection, serve upon the permit holder a written notice of intent to suspend the permit, which notice shall specify with particularity the violation(s) in question and afford the permit holder reasonable opportunity to correct such violation(s). A suspension of a permit shall remain in effect until the violation(s) has been corrected to the satisfaction of the department.

(2) Following the issuance of a permit, each milk plant, receiving station, transfer station or handler shall be inspected at least annually. Should the violation of any requirement set forth in this regulation be found to exist, a second inspection may be required after the time deemed necessary to remedy the violation, but not before three (3) days; the reinspection will be used to determine compliance with the requirements of this regulation. Whenever a violation continues to exist on the reinspection, the department may issue an official notice, and specify a time for the violation to be corrected. Failure to comply with the requirements of the official notice may be cause for permit suspension in accordance with this regulation.

(3) Upon written application of any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend and in the latter case, before suspension, the department shall within a reasonable time proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify, or rescind the suspension or intention to suspend. Any permit suspended under the provisions of this section may be reinstated by submission of proper evidence satisfactory to the department that the violations have been corrected.

Section 5. [37.] Trade Secrets. No person who in an official capacity obtains any information under the provisions of this regulation which is entitled to protection as a trade secret (including information as to quantity, quality, source of disposition of milk or milk products, or results of inspections or tests thereof) shall use such information to his own advantage or to reveal it to any unauthorized person.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 15, 1978

RECEIVED BY LRC: September 15, 1978 at 3:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, Department for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(Proposed Amendment)

902 KAR 100:075. Group classifications.

RELATES TO: KRS 211.840 to 211.852, 211.990(4) [152.690 to 152.990]

PURSUANT TO: KRS 13.082, [152.690,] 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: KRS 211.844 [152.690] directs that the Secretary of the Department for Human Resources shall provide by regulation for the registration and licensing of the possession or use of any source of ionizing or electronic produce [conveying] radiation and the [transportation,] handling and disposal of radioactive waste. The purpose of this regulation is to classify specific diagnostic procedures using radioactive material into groups.

Section 1. Applicability. This regulation groups specific diagnostic procedures to facilitate the issuance of licenses for the medical use of radioactive material.

Section 2. Groups of Diagnostic Uses of Radioactive Material in Humans. Whenever an applicant has been approved, under the appropriate provisions of these regulations, to perform any one of the diagnostic procedures listed in the following groups, the applicant may be approved to perform all the diagnostic procedures within that group.

(i) Group I. Use of prepared radiopharmaceuticals for certain diagnostic studies involving measurements of uptake, dilution and excretion. This group does not include uses involving imaging and tumor localization.

(a) Iodine 131 or Iodine 125 as sodium iodide for thyroid uptake.

(b) Iodine 131 or Iodine 125 as iodinated human serum albumin (IHSA) for determinations of blood and blood plasma volume and for studies of cardiovascular function and protein turnover.

(c) Iodine 131 or Iodine 125 as labeled rose bengal for liver function studies.

(d) Iodine 131 or Iodine 125 as labeled fats or fatty acids for fat absorption studies.

(e) Iodine 131 or Iodine 125 as labeled iodopyracet, sodium iodohippurate, sodium diatrizoate, diatrizoate methylglucamine, sodium diprotrizoate, sodium acetrizoate, or sodium iothalamate for kidney function studies.

(f) Chromium 51 as labeled human serum albumin for gastrointestinal protein loss studies.

(g) Chromium 51 as sodium chromate for determination of red blood cell volumes and studies of red blood cell survival time and gastrointestinal blood loss.

(h) Iron 59 as chloride, citrate, or sulfate for iron turnover studies.

(i) Cobalt 57, Cobalt 58 or Cobalt 60 as labeled cyanocobalamin (vitamin B-12) for intestinal absorption studies.

(j) Potassium 42 as chloride for potassium space determinations.

(k) Sodium 24 as chloride for sodium space determinations.

(l) Technetium 99m as pertechnetate for blood flow studies.

(m) Mercury as chlormerodrin for kidney function studies.

(n) Any radioactive material in a radiopharmaceutical and for a diagnostic use involving measurements of uptake, dilution or excretion for which a "Notice of Claimed Investigational Exemption for a New Drug" (IND) has been accepted by the Food and Drug Administration (FDA).

(2) Group II. Use of prepared radiopharmaceuticals for diagnostic studies involving imaging and tumor localization.

(a) Iodine 125 as fibrinogen for detection and monitoring of developing deep vein thrombosis.

(b) Iodine 131 or Iodine 125 as sodium iodide for thyroid imaging.

(c) Iodine 131 as iodinated human serum albumin (IHSA) for brain tumor localizations and cardiac imaging.

(d) Iodine 131 as macroaggregated iodinated human serum albumin for lung imaging.

(e) Iodine 131 as colloidal (microaggregated) iodinated human serum albumin for liver imaging.

(f) Iodine 131 as labeled rose bengal for liver imaging.

(g) Iodine 131 as iodopyracet, sodium iodohippurate, sodium diatrizoate, diatrizoate methylglucamine, sodium diprotrizoate or sodium acetrizoate for kidney imaging.

(h) Iodine 131 as sodium iodipamide for cardiac imaging.

(i) Iodine 131 as iodinated human serum albumin (IHSA) for placenta localization.

(j) Chromium 51 as sodium chromate for spleen imaging.

(k) Chromium 51 as labeled human serum albumin for placenta localization.

(l) Gold 198 in colloidal form for liver imaging.

(m) Mercury 197 as labeled chlormerodrin for kidney and brain imaging.

(n) Mercury 203 as labeled chlormerodrin for brain imaging.

(o) Selenium 75 as labeled selenomethionine for pancreas imaging.

(p) Strontium 85 as nitrate or chloride for bone imaging in patients with suspected or diagnosed cancer.

(q) Technetium 99m as pertechnetate for brain imaging.

(r) Technetium 99m as pertechnetate for thyroid imaging.

(s) Technetium 99m as pertechnetate for salivary gland and blood pool imaging including placenta localization.

(t) Technetium 99m as labeled sulfur colloid for liver, spleen and bone marrow imaging.

(u) Technetium 99m as labeled macroaggregated human serum albumin for lung imaging.

(v) Ytterbium 169 as pentetate calcium trisodium labeled diethylenetriamine pentaacetic acid (DTPA) for cisternography.

(w) Indium 113m as chloride for blood pool imaging, including placenta localization.

(x) [(w)] Any radioactive material in a radiopharmaceutical prepared from a reagent kit listed in subsection (3)(c) of this section for a use listed in that subsection.

(y) [(x)] Any radioactive material in a radiopharmaceutical and for a diagnostic use involving imaging for which a "Notice of Claimed Investigational Exemption for a New Drug" (IND) has been accepted by the Food and Drug Administration (FDA).

(3) Group III. Use of generators and reagent kits for the preparation and use of radiopharmaceuticals containing radioactive material for certain diagnostic uses.

(a) Molybdenum 99/technetium 99m generators for the elution of technetium 99m as pertechnetate for:

1. Brain imaging,

2. Thyroid imaging,

3. Salivary gland imaging,

4. Blood pool imaging including placenta localization,

5. Blood flow studies,

6. Use with reagent kits for preparation and use of radiopharmaceuticals containing technetium 99m as provided in subsection (3)(c) and (d) of this section.

(b) Technetium 99m as pertechnetate for use with reagent kits for preparation and use of radiopharmaceuticals containing technetium 99m as provided in subsection (3)(c) and (d) of this section.

(c) Reagent kits for preparation of technetium 99m labeled:

1. Sulfur colloid for liver, spleen and bone marrow imaging,

2. Iron-ascorbate diethylenetriamine pentaacetic acid complex for kidney imaging,

3. Diethylenetriamine pentaacetic acid (Sn) for kidney imaging and kidney function studies.

4. Diethylenetriamine pentaacetic acid (Sn) for brain imaging,

5. Human serum albumin microspheres for lung imaging,

6. Polyphosphates for bone imaging,

7. Macroaggregated human serum albumin for lung imaging,

8. Distannous etidronate complex for bone imaging,

9. Stannous pyrophosphate for bone and cardiac imaging,

10. Human serum albumin for heart blood pool imaging,

11. Medronate sodium for bone imaging,

12. Glucoptate sodium for brain and renal perfusion imaging.

(d) Tin 113/indium 113m generators for the elution of indium 113m as chloride for blood pool imaging including placenta localization.

(e) Any generator or reagent kit for preparation and diagnostic use of a radiopharmaceutical containing radioactive material for which generator or reagent kit a "Notice of Claimed Investigational Exemption for a New Drug" (IND) has been accepted by the Food and Drug Administration (FDA).

GAIL S. HUECKER, Commissioner,
PETER D. CONN, Secretary

ADOPTED: September 12, 1978

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, Department for
Human Resources, 275 East Main Street, Frankfort, Kentucky, 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:026. Dental services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the department, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to dental services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Out-of-Hospital Services: Payment for services is limited to those procedures listed in the department's Dental Benefit Schedule which are included in the following categories:

- (1) Diagnostic;
- (2) Preventive;
- (3) Oral surgery;
- (4) Endodontics;
- (5) Operative;
- (6) Crown and bridge;
- (7) Prosthetics;
- (8) Orthodontics;
- (9) Dentures; and
- (10) Other services.

Section 2. Limitations by Age Group: Payment for the following procedures shall be limited to recipients of medical assistance who are under age twenty-one (21):

- (1) Topical application of stannous fluoride, two (2) treatments per year excluding prophylaxis. *The dentist may, at his option, utilize dental sealant instead of the second topical application of stannous fluoride.*
- (2) Extirpation of pulp filling of one (1) rooted, two (2) rooted and three (3) rooted canal, excluding restoration.
- (3) Repair of fracture of transitional appliance or space maintainers.
- (4) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance or space maintainer.
- (5) Fixed space maintainer, band type.
- (6) Removable space maintainer, acrylic.
- (7) Removable appliance for tooth guidance.
- (8) Fixed or cemented appliance for tooth guidance.
- (9) Transitional appliance, includes one (1) tooth on appliance, upper appliance.
- (10) Transitional appliance, includes one (1) tooth on appliance, lower appliance.
- (11) Each additional tooth on appliance.
- (12) Child dental prophylaxis, two (2) treatments per year.

Section 3. Calendar Year Restrictions: Procedures for which payment is limited on a calendar year basis are:

- (1) One (1) each for the following:
 - (a) Dental prophylaxis (for adults aged twenty-one (21) or over).
 - (b) Relining upper denture (flask cured only).
 - (c) Relining lower denture (flask cured only).

(d) Transitional appliance, includes one (1) tooth on appliance, upper appliance.

(e) Transitional appliance, includes one (1) tooth on appliance, lower appliance.

(2) Any two (2) from the following. This may be in the form of two (2) from any one (1) of the procedures, or one (1) each from any two (2) of the procedures:

- (a) Fixed space maintainer, band type.
- (b) Removable space maintainer, acrylic.
- (c) Removable appliance for tooth guidance.
- (d) Fixed or cemented appliance for tooth guidance.
- (3) Three (3) each for the following:
 - (a) Repair of fracture of transitional appliance or space maintainer.
 - (b) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance or space maintainer.
 - (c) Repairing broken denture with no teeth damaged.
 - (d) Repairing broken denture and replacing one (1) broken tooth.

Section 4. In-patient Hospital Services: (1) Payment shall be made for all hospital in-patient services rendered by oral surgeons.

(2) Payment for services, pre-authorized by the Division for Medical Assistance, rendered by general dentists for hospital in-patient care shall be limited to multiple extractions for patients termed to be "medically a high risk," defined as:

- (a) Heart disease;
- (b) Respiratory disease;
- (c) Chronic bleeder;
- (d) Uncontrollable patient, i.e., retardate, emotionally disturbed;
- (e) Other, e.g., car accident, high temperature, massive infection.

Section 5. Dentures: Dentures, excluding replacement and interim dentures, are provided only when preauthorized by the department. Such preauthorization shall be granted only when submitted prior to extraction, [full-mouth] extraction of [remaining] teeth of the eligible recipient is the indicated method of dental treatment, and the recipient will, following extraction, be left with no more than two (2) teeth per arch (i.e., four (4) teeth per mouth). Recipients currently edentulous (without teeth at the time of the preauthorization request) are not eligible for this benefit.

Section 6. Effective Date: The amended coverage provisions of Sections 2 and 5 shall become effective on July 1, 1978.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 12, 1978

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:045. Payments for mental health center services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the department, by regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the department for mental health center services.

Section 1. Mental Health Centers: *In accordance with 42 CFR 450.30, the department shall make payment to providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractual arrangements as the department may require of this class of provider) set by the department, on the following basis: [The department shall reimburse participating mental health centers on the basis of a pre-established flat fee per visit rate based on certified cost audits.]*

(1) Payment shall be made on the basis of reasonable allowable costs.

(2) Payment amounts shall be determined by application of the "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement" developed and issued by the department, supplemented by the use of Title XVIII reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable.

Section 2. Implementation of Payment System: *[Amount of Payment: the flat fee per visit rate for reimbursement shall be sixteen dollars and eight-two cents (\$16.82).]*

(1) The system shall utilize a method whereby community mental health centers are reimbursed on a prospective basis based on prior year actual allowable cost.

(2) The department may establish an interim rate at the end of each fiscal year until such time as a final prospective rate is determined with interim payments adjusted to the final prospective rate as necessary.

(3) The vendor shall complete an annual cost report on forms provided by the department not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each community mental health center provider shall make available to the department at the end of each fiscal reporting period, and at such intervals as the department may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the department.

(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs: *The department shall*

not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the department's "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

GAIL S. HUECKER, Commissioner
 PETER D. CONN, Secretary

ADOPTED: September 12, 1978

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
 TO: Secretary for Human Resources, DHR Building, 275
 East Main Street, Frankfort, Kentucky, 40601

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973 recipients of aid to the aged, blind and disabled, hereinafter referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation: *Mandatory state supplementation payments must be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments must continue until such time as the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.*

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the bureau in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation: *Optional state supplementation is available to those persons meeting*

technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 904 KAR 1:003 and 904 KAR 1:004 who require special living arrangements and who have insufficient income to meet their need for care. *Special living arrangements include residence in a personal care home as defined in 902 KAR 20:030 or family care home as defined in 902 KAR 20:040 or [who require a caretaker to prevent institutionalization.] situations in which a caretaker must be hired to provide care in excess of room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.*

Section 3. Income Considerations: In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income is conserved for an ineligible, non-SSI spouse and/or minor dependent children in the amount of the medical assistance program basic maintenance scale for family size adjusted by deduction of sixty-five dollars (\$65) from monthly earnings of spouse.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 4. Standard of Need: (1) The standard, based on living arrangement, from which income as computed in Section 3 is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: \$320, effective 7/1/77; \$335, effective 1/1/78; not less than \$350, effective 7/1/78;

(b) Family care home: \$258, effective 7/1/77; not less than \$273, effective 7/1/78;

(c) Caretaker:

1. Single individual: \$216, effective 7/1/77; not less than \$227, effective 7/1/78;

2. Married couple, one (1) requiring care: \$300, effective 7/1/77; not less than \$322, effective 7/1/78;

3. Married couple, both requiring care: \$328, effective 7/1/77; not less than \$350, effective 7/1/78.

(2) In couple cases, both requiring a caretaker, and both eligible one-half (½) of the deficit is payable to each. If one (1) is ineligible (neither aged, blind nor disabled) one-half (½) of the deficit is payable to the eligible member.

Section 5. Institutional Status: No aged, blind or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under the Health Licensure Act, KRS 216.425.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 12, 1978

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SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 5:080. Reasonable time for protesting claim.

RELATES TO: KRS 341.370(4), 341.530(3)

PURSUANT TO: KRS 13.082, 194.050, 341.115

NECESSITY AND FUNCTION: This regulation defines the term "reasonable time" within which an employer must protest a claim by a former worker. A non-most recent employer is now given fifteen (15) days within which to protest instead of ten (10).

Section 1. Except as provided in Section 2 of this regulation the reasonable time referred to in KRS 341.370(4) and 341.530(3) shall not extend beyond ten (10) [seven (7)] days after the date of first notice to the employer from the division that a claim has been filed. In computing such ten (10) [seven (7)] day period, the day following the date of mailing of such notice shall be considered the first day, and the date [day] the employer's return notice is delivered to a representative of the division or deposited in the mail, as indicated by the postmark thereon, shall be considered the date it is received by the division.

Section 2. In the event the employer is not the worker's most recent employer and has not received Form UI-412-A or UI-412-B as provided in 904 KAR 5:070, the reasonable time referred to in KRS 341.530(3) shall not extend beyond fifteen (15) days after the date of first notice to the employer from the division that a claim has been filed. In computing such fifteen (15) day period the day following the date of mailing of such notice shall be considered the first day, and the day the employer's return notice is delivered to a representative of the division or deposited in the mail, as indicated by the postmark thereon, shall be considered the date it is received by the division.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 15, 1978

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TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 5:190. Payments to fund in lieu of contributions.

RELATES TO: KRS 341.275, 341.277

PURSUANT TO: KRS 13.082, 194.050, 341.115

NECESSITY AND FUNCTION: This regulation sets the payment schedule in lieu of contributions to the division by nonprofit organizations and governmental entities. Changes have been made to comply with federal guidelines.

Section 1. The election of a nonprofit organization as defined in KRS 341.275(1) or a governmental entity as

defined in KRS 341.277(1) to make payments to the fund in lieu of contributions shall be made on forms requiring such information as may be prescribed by the Secretary.

Section 2. Any nonprofit organization or any governmental entity which elects to make payments to the fund in lieu of contributions, in accordance with KRS 341.275(2), or 341.277(1), shall deposit with the division, as a condition of such election a maximum amount of money equal to the lesser of two (2) percent of the total wages paid or [three and two-tenths (3.2)] four (4) percent of the taxable wages paid by such employing unit during the four (4) calendar quarters immediately preceding the effective date of such election, unless the secretary determines that such employing unit or guarantor acceptable to the secretary possesses equity in real [or personal] property equal in value to at least double the amount of the deposit that would otherwise be required. If such non-profit organization or governmental entity did not pay wages in each of the four (4) calendar quarters immediately preceding such election, the secretary shall determine the amount to be deposited on the basis of such information as may be available.

Section 3. *Notwithstanding this regulation, this state or any city, county, city-county urban government or public school district including such entity's instrumentalities for which such governmental entity is legally liable for the indebtedness of such instrumentality, which elects to make*

payments to the fund in lieu of contributions in accordance with KRS 341.277(1), shall not be required to meet the provisions of Section 2 above.

Section 4. [3] The secretary may require an adjustment in the amount deposited with the division in accordance with Section 2 of this regulation at any time he determines there has been a substantial change in the amount of wages paid by a nonprofit organization or governmental entity when related to the wages or information upon which such deposit requirement was originally based.

Section 5. [4] An election to make payments to the fund in lieu of contributions by any nonprofit organization or governmental entity failing to comply with any of the requirements of this regulation or of KRS 341.275 or 341.277, shall be rejected by the secretary and such employing unit shall be notified in writing of the reason for such rejection.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 12, 1978

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, Department for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601.

Proposed Regulations

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:020. Loan insurance program.

RELATES TO: KRS 164.740 to 164.764

PURSUANT TO: KRS 13.082, 164.748(4)

NECESSITY AND FUNCTION: KRS 164.744 provides that the Kentucky Higher Education Assistance Authority may insure loans for students. This regulation names the loan insurance program, establishes an effective date and cites relevant federal and state laws and regulations.

Section 1. Name of Program. The loan insurance program administered by the Authority shall be known as the Kentucky Higher Education Assistance Authority Guaranteed Student Loan Program and may be cited as KHEAA-GSLP or as GSLP.

Section 2. Effective Date. The GSLP will begin operation on October 1, 1978, or as soon thereafter as this regulation becomes effective.

Section 3. Federal Laws and Regulations. Pursuant to KRS 164.744 the authority must, when providing a program of student loan insurance, enter into agreements with the U. S. Commissioner of Education providing for interest payments, reimbursements, reinsurance and other benefits to the extent provided by the Higher Education Act of 1965 (20 U.S.C. 1071 to 1087-4) and such other

federal acts as may be cited in Part 177, Section 177. 1 et seq. of Title 45 of the Code of Federal Regulations. Other applicable legislation includes the General Education Provisions Act (20 U.S.C. 1221-33h) and parts of Title IV, Part F of the Higher Education Act of 1965 (20 U.S.C. 1088-89). The above cited acts and regulations are incorporated by reference in agreements executed on July 18, 1978, between the authority and the U. S. Commissioner of Education. Copies of the agreements are available from the Authority. The acts and regulations are available to the public at any federal depository library. A list of such libraries is available free upon request by writing to the Library, Public Documents Department, Government Printing Office, Washington, D.C. 20402.

Section 4. State Law and Regulations. The GSLP is operated under provisions of KRS 164.740 to 164.764, and administrative regulations published under Title 11 of the "Kentucky Administrative Regulations." Chapter 3 pertains both to the KHEAA Student Loan Program and to GSLP. Chapter 4 is applicable to all programs administered by the authority.

PAUL P. BORDEN, Executive Director

ADOPTED: August 23, 1978

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: The Executive Director, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 4:030. Student appeals process.

RELATES TO: KRS 164.748(14)

PURSUANT TO: KRS 13.082, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers programs to provide financial assistance to students to attend post-secondary institutions. This regulation sets forth the procedures by which students may request a review of decisions made by the authority which affect their eligibility to participate in authority administered programs.

Section 1. Written Inquiry. A student may, upon any adverse action by the authority, submit a written request to the authority or any delegated officer of the authority at Frankfort, Kentucky, for a concise statement of the reason(s) for such action. The authority or any of its delegated officers, within ten (10) working days of said notice, shall initiate a written response to the student inquiry and notify the student therein of the right to appeal. In the event the student disputes the factual basis on which the decision was made, the student may request a review of the decision by the executive director. If the findings warrant, the executive director may uphold the findings of the officer or may find in favor of the student.

Section 2. Notices. The student shall be provided with notice of the decision which shall be issued in the name of the executive director and shall inform the student of the right to appeal to the authority for a hearing on all issues contained therein. All requests for hearings may be effected in the same manner as prescribed by law for the service of civil process or by the student forwarding same to the authority by U.S. registered mail or certified mail, postage prepaid, to the authority at Frankfort, Kentucky. At such a hearing the student will be entitled to be represented by counsel chosen by the student at student expense. The hearing may be conducted by a hearing officer or a hearing committee appointed by the authority. All members of the authority and all persons appointed by the authority as hearing officer or members of a hearing committee are authorized to administer oaths, issue subpoenas for attendance of witnesses and for the production of related records and documentation, and to cite for contempt before the court having jurisdiction in the county in which the hearing is held for disobedience of its process or for improper conduct. The student, or student counsel or both will be entitled to introduce testimony by witnesses or, if the authority so permits, by deposition(s). Hearing officers and hearing committees will prepare recommendations and submit same to a committee of the board.

Section 3. Decisions and Appeals. In the absence of an appeal to the board, decisions made as a result of the authority hearing shall be binding upon the authority and the student, twenty (20) days after written notice thereof is given as provided.

PAUL P. BORDEN, Executive Director

ADOPT: August 23, 1978

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Executive Director, Kentucky Higher Education Assistance Authority, 691 Teton Trail, Frankfort, Kentucky 40601.

CABINET FOR DEVELOPMENT Department of Fish and Wildlife Resources

301 KAR 2:085. Seasons and limits for migratory birds.

RELATES TO: KRS 150.025, 150.170, 150.175, 150.235, 150.305, 150.330, 150.340, 150.360

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: This regulation pertains to the bag limits, possession limits, and seasons for the taking of certain migratory birds, including waterfowl. In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The framework of this regulation falls within the seasons and bag limits dictated by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply.

Section 1. Seasons. (1) Ducks, Coots and Mergansers: November 18 through November 26, 1978; December 2 through January 11, 1979.

(2) Geese: November 12 through January 20, 1979.

(3) Rails (Sora and Virginia): November 12 through January 20, 1979.

(4) Gallinules: November 12 through January 20, 1979.

Section 2. Limits. (1) Ducks:

(a) Bag Limits. A point system bag limit is in effect. Point values for species and sexes taken are as follows (either sex unless specified):

1. Canvasback: 100 points;

2. Hen mallard, black duck, wood duck, hooded merganser and redhead: 70 points;

3. Pintail, blue-winged teal, cinnamon teal, green-winged teal, widgeon, gadwall, shoveler, scaup and mergansers (except hooded merganser): 10 points;

4. Drake mallard and all other species of ducks not mentioned above: 35 points;

5. Coots; but limited to 15 daily and 30 in possession: 0 points.

(b) The daily bag limit is reached when the point value of the last duck taken, added to the total of the point values of the other ducks already taken during that day, reaches or exceeds 100 points. The maximum number of points possible is 195.

(c) Possession limits. The possession limit is the maximum number of ducks of those species and sexes which could have legally been taken in two (2) days. The maximum number of points possible for the possession limit is 390.

(2) Geese:

(a) Bag limits, statewide. Five (5) (only two (2) Canada or two (2) white-fronted or one (1) of each).

(b) Possession limits, statewide. Five (5) (any combination of Canada, blue, snow or white-fronted geese, not to include more than four (4) Canada and white-fronted in the aggregate, of which not more than two (2) may be white-fronted geese).

(3) Others:

(a) Coots: bag limit 15; possession limit 30;

(b) Rails (Sora and Virginia): bag limit 25 (singly or in the aggregate); possession limit 25 (singly or in the aggregate);

(c) Gallinules: bag limit 15; possession limit 30.

Section 3. Shooting Hours. The basic shooting hours for ducks, geese, coots, mergansers, rails and gallinules shall be one-half (½) hour before sunrise to sunset (prevailing time). The shooting hours for ducks and geese on Ballard County Wildlife Management Area shall be one-half (½) hour before sunrise to twelve (12) o'clock noon prevailing time.

Section 4. Shot Size Restrictions. No shot larger than BBs may be used or possessed for shooting waterfowl.

Section 5. Ballard County Goose Quota Zone. (1) Canada goose quota. Federal regulations limit the harvest of Canada geese to 15,000 in the designated quota zone.

(2) Quota zone boundaries. The Ballard County Canada goose quota zone is described as follows: starting at the northwest city limits of the town of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe.

(3) Quota zone permit requirements. All persons hunting geese on commercial waterfowl shooting areas and non-commercial lands and/or waters within the designated quota zone must comply with regulations 301 KAR 2:055 and 301 KAR 3:070.

(4) Closure of quota zone. When it has been determined that the Canada goose quota of 15,000 will have been filled prior to January 20, the season for taking Canada geese in the quota zone will be closed by the Commissioner of the Department of Fish and Wildlife Resources upon giving public notice through the news media at least forty-eight (48) hours in advance of the time and date of closing.

Section 6. Migratory Bird Shipping and Transportation Restrictions. For information on tagging, shipping, transporting and storing migratory game birds, refer to regulation 301 KAR 2:090. Geese taken in the counties of Ballard, Hickman, Fulton and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the postal service, or by any person except as the personal baggage of the hunter taking the birds.

Section 7. Methods of Taking. For information on legal methods of taking migratory birds, refer to regulation 301 KAR 2:090.

Section 8. Waterfowl Seasons on Specified Wildlife Management Areas. (1) Ballard County Wildlife Management Area, located in Ballard County, Kentucky, and described as follows: bounded on the north by the Turner Landing Road, on the west by the Ohio River, on the south by the Terrell Landing Road, on the east by refuge sign markers and visible yellow paint markers on tree line; a tract of land known as the Rudy and Haydon tracts bounded on the south by the Turner Landing Road, on the east by refuge sign markers and visible yellow paint markers on tree line, on the north by Kentucky Highway 473, then running south along the east bank of Mitchell Lake to the Turner Landing Road; also, open on the north side of the refuge proper a tract of land north of the Clark Line Road including Shelby Lake and west to the Ohio River and continuing north to yellow signs.

(a) Species and Seasons:

1. Ducks, Coots and Mergansers: December 2 through January 11, 1979 (excluding Sundays and Christmas Day);

2. Geese: November 27 through January 20, 1979 (excluding Sundays and Christmas Day).

(b) There will be an eight (8) shell limit per hunter on the Ballard County Wildlife Management Area when hunting geese. This does not apply when hunting ducks from pothole blinds or pits as separated from goose hunting areas. Shooting ducks is permitted in goose hunting areas but shooting geese in duck areas is prohibited. The barrel and magazine of all guns will be checked for ammunition before the hunter enters the check station. No shot larger than BBs may be used or possessed for hunting waterfowl. Any hunter on the management area under the age of eighteen (18) must be accompanied by an adult. Any person whose transportation to and from pits and blinds is furnished by the Department of Fish and Wildlife Resources must have his gun encased.

(c) Miller Tract, located in Ballard County, Kentucky and consisting of 300 acres, more or less south of the Terrell Landing Road and marked with yellow signs reading "Wildlife Management Area for Public Hunting" is open to waterfowl hunting during the regular statewide season. Pits and blinds must be 100 yards apart and 100 yards from Terrell Landing Road. Both ducks and geese may be taken by hunters occupying a pit or blind. Shooting hours conform to statewide regulations.

(2) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties and described as follows: waterfowl hunting is permitted on Kentucky Lake below elevation 359' and at higher elevations within twenty-five (25) yards of the 359' elevation, Kentucky-Tennessee state line to Barkley Canal in all bays is open to hunting, except Smith and Pisgah Bays which are indicated by signs and are closed to hunting. Duncan Bay is an eagle and waterfowl refuge during the dates designated by signs posted along the boundary. It is closed to all activity. The remainder of Kentucky Lake is open to waterfowl hunting in conformance with statewide regulations. No permits are required.

(3) Lake Barkley Wildlife Management Area:

(a) Refuge areas will be closed to all hunting, fishing, boating and molesting of waterfowl during the dates designated by signs posted along the boundaries. Refuges are as follows: an area on the west side of the main channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light). Boating is allowed but hunting is prohibited in Crooked Creek Bay; area surrounded by levee and located between river mile 68.4 and river mile 70.4.

(b) Open hunting areas. Hunting will be permitted on the remainder of Lake Barkley with the exception of recreation areas and access points which will be closed and designated by posted signs at the entrance of said areas. Waterfowl hunting along the western shore of the lake will be confined to those areas below the 359' contour, and those areas within twenty-five (25) yards of the 359' elevation.

(c) Permanent blinds or pits must be registered on a permit issued by the Corps of Engineers. Applicants for blind or pit permits must show a Kentucky hunting license to the registration clerk before a permit will be issued. Registration will be conducted at the Lake Barkley Maintenance Shop located at Barkley Dam off U.S. Highway 641-62 on October 2 from 8:00 a.m. to 9:00 a.m. prevailing time. Applicants for permanent blinds or pits will take part in a special drawing to determine the order of blind registra-

tion. The drawing, which will close promptly at 9:00 a.m., will be followed by registration in which hunters with the lowest numbers will receive first choice of locations. Hunters who miss out on the special October 2 drawing will be registered on a first come first served basis at the resource manager's office from 8:00 a.m. to 3:00 p.m. (prevailing time) weekdays, except federal holidays, from October 3 through November 30. A permit will be issued for each permanent blind or pit and only one (1) permit will be issued per hunter. Blind or pit permittees will have priority over their registered blinds or pits and may claim ownership by showing their permit. Permits are not transferable to other hunters. Permanent registered blinds or pits must not be locked to exclude other waterfowl hunters when not occupied. Any waterfowl hunter may occupy any unoccupied blind or pit until claimed by the permittee. All pits and blinds must be 100 yards apart and 200 yards from any refuge as designated by signs. Permanent pits or blinds must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

(4) Barren Lake Wildlife Management Area, located in Barren, Allen and Monroe Counties and including all lands and waters owned and operated by the Department of the Army, Corps of Engineers, including those under license to the Kentucky Department of Fish and Wildlife Resources as marked by red painted steel boundary posts are open to waterfowl hunting during the regular statewide season with the following exceptions: all recreation areas, operational areas and islands (except Mason Island) are closed to all hunting. Lands under license to the department are open to hunting for all other wildlife species during the regular statewide seasons. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. Registration will be conducted at the Barren Lake resource manager's office located near the dam off Kentucky Highway 252, from October 2 through December 31, 1978, during weekdays only, from 7:30 a.m. to 4:00 p.m. prevailing time, excluding federal holidays. A permit will be issued for each permanent blind and only one permit will be issued per hunter. All blinds must be 100 yards apart. Permanent blinds must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

(5) Nolin, Rough, Green and Buckhorn Wildlife Management Areas, including all lands and waters owned and operated by the Department of the Army, Corps of Engineers, including those under license to the Kentucky Department of Fish and Wildlife Resources, and excluding all recreation and park areas, are open to all waterfowl hunting during the regular statewide season. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. Registration will be conducted at each of the resource managers' offices located at or near the dam sites, from October 2 through December 31, 1978 during weekdays only, from 7:30 a.m. to 4:00 p.m. prevailing time, excluding federal holidays. A permit will be issued for each permanent blind and only one permit will be issued per hunter. All blinds must be 100 yards apart. Permanent blinds must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

(6) Grassy Pond-Powell's Lake Unit of the Sloughs Wildlife Management Area, located in Henderson and Union Counties and including all lands and waters marked

by green steel boundary posts, is open to waterfowl hunting during the regular statewide season.

(a) Only permanent pits or blinds will be allowed for waterfowl hunting. These will be registered on a permit issued by the Department of Fish and Wildlife Resources. Applicants for a permanent pit or blind must show a current Kentucky hunting license before a permit will be issued. Applicants for pits or blinds will take part in a special drawing to determine the order of blind registration. The drawing for numbers will take place on October 10, 1978, from 7:00 p.m. until 8:00 p.m. prevailing time at the Henderson Community and Youth Center in Atkinson Park, Henderson, Kentucky. The drawing, which will close promptly at 8:00 p.m. will be followed by registration in which hunters with the lowest numbers will receive first choice of pit or blind locations. A nontransferable permit will be issued for each permanent pit or blind and only one (1) permit per hunter will be issued. Permittees will have priority over other users of their registered pits or blinds and may claim ownership by showing their permit. Registered pits or blinds must not be locked to exclude other hunters when not occupied by the permittee. Any waterfowl hunter may occupy any unoccupied pit or blind until claimed by the permittee. Only four (4) hunters may occupy a pit or blind at one time. All blinds and pits must be 100 yards apart. Permit holders who have not constructed their pit or blind at the registered location by November 10, 1978, will lose their location and the site may be assigned to another hunter.

(b) When the Ohio River stage at the Uniontown Lock and Dam reaches a level of thirty-seven (37) feet, a backwater condition exists. Under this condition, hunting will be allowed from boats, spaced 100 yards apart, without regard to the registered pits or blinds.

Section 9. Wildlife Management and Other Areas Closed or Partially Closed to Hunting of Waterfowl: (1) Sauerheber Unit of the Sloughs Wildlife Management Area located in Henderson County will be closed to all hunting, fishing, boating and trespassing during the period indicated on posted signs. This area is bounded on the north by Kentucky Highway 268 and includes all state-owned lands to the south within the area designated by yellow signs.

(2) Dewey Lake Wildlife Management Area located in Floyd County.

(3) Grayson Wildlife Management Area located in Carter and Elliott Counties.

(4) Cave Run Lake located in Bath, Rowan, Menifee and Morgan Counties, is closed only to the hunting of geese on all lands and waters enclosed within a boundary marked by a red painted line and metal posts with green painted tops.

(5) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties.

(6) Cane Creek Wildlife Management Area located in Laurel County.

(7) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties.

(8) Redbird Wildlife Management Area located in Leslie and Clay Counties.

MIKE BOATWRIGHT, Chairman
Fish and Wildlife Resources Commission
CARL E. KAYS, Commissioner

ADOPTED: August 28, 1978

APPROVED: WILLIAM L. SHORT, Secretary

RECEIVED BY LRC: September 14, 1978 at 9:45 a.m.

PUBLIC HEARING: A public hearing on this propos-

ed regulation is scheduled for 10 p.m., EDT October 10, 1978 in the first floor auditorium of the State Office Building, Clinton and High Streets, Frankfort, Kentucky. For additional information or submission of written comments, contact Carl E. Kays, Commissioner, Department of Fish and Wildlife Resources, 592 East Main Street, Frankfort, Kentucky 40601.

DEVELOPMENT CABINET Development Finance Authority

305 KAR 2:010. Tourism loans.

RELATES TO: KRS 154.001 to 154.060, KRS Chapter 154

PURSUANT TO: KRS 154.010(17), 154.060

NECESSITY AND FUNCTION: Tourism constitutes economic activity which can be assisted through the encouragement of businesses related to and supportive of such activity, and tourism can be assisted through the function of the development authority.

Section 1. Definitions. (1) "Applicant" means that person(s), partnership, corporation, co-operative or other legal entity in which ownership of the proposed tourist project will be vested.

(2) "Application" means a document or group of documents containing a business plan including a general description of the business, a market feasibility analysis, a three (3) year audited financial statement, and five (5) year pro forma cash flow analysis; a legal description of the project site; detailed cost estimates; site surveys; development plan; method of financing; plans for insurance during acquisition and completion of the project; and any other statements and documents required by these regulations or deemed to be necessary by the board.

(3) "Loan agreement" means a contractual document delineating in detail the terms and conditions including and supplementing the provisions of the note, mortgage, chattel mortgage or other security agreement upon which the authority has made the subject loan.

(4) "Tourist project" means, in addition to its statutory definition, a commercial or business project, conforming with developmental qualities, that will provide services or have other special attributes that will directly stimulate a net increase in tourism in the area and thereby increase overall employment and stimulate economic activity; and shall be a project that is part of a larger area wide program expected to attract tourists and contributing to the fundamental growth of tourism in the area.

(5) "Tourist Project Loan Committee" means those members of the board who were appointed by the Governor as representatives of tourism interests, and such others as may be appointed by the Chairman of the Kentucky Development Finance Authority.

(6) "Tourist Project Technical Advisors" means a group of persons whose members are appointed by the Secretary of the Development Cabinet and whose duty is to advise the board concerning the technical and financial feasibility of a proposed tourist project.

Section 2. No tourist project loan shall be made by the authority until the applicant has furnished written proof of

its inability to obtain the funds necessary to complete the project from conventional lending sources.

Section 3. Prior to extensive review by the authority, an applicant for a tourist project loan shall have contacted the Small Business Administration, Farmers Home Administration, or other similar federal loan or loan guarantee program, for financial assistance.

Section 4. No tourist project loan shall be made by the authority until the applicant has submitted, for comment or review, a proposal of the project to the area development district in which the proposed project is situated.

Section 5. No application for financial assistance shall be submitted without a project feasibility evaluation including a detailed description of the project; building, equipment and machinery cost estimates; income and expense projections; environmental impact statement; proposed additional sources of funding and repayments; and other economic projections and business plan information as will allow the Tourist Project Loan Committee to evaluate the project request.

Section 6. It shall be the function of the Tourist Project Loan Committee to review all tourist project loan applications to determine, with the assistance of the Tourist Project Technical Advisors, whether the project is technically and financially feasible and ready for submission to the board. It shall further be the function of the committee to approve a "loan agreement" to be submitted to the board.

Section 7. If all statutory and regulatory requirements have been met, the KDFA Board shall have the exclusive power to approve or disapprove, by majority vote, a loan of funds pursuant to the approved loan agreement, or a revision of the loan agreement as the board may deem reasonable. The decision of the board shall be final.

Section 8. Tourist project loan financing shall include the financing of the purchase and development of land, and the purchase, construction, conversion, acquisition, and modernization of fixtures, equipment, machinery, facilities and other improvements.

Section 9. In no instance shall the authority finance any tourist project whose chief purpose is advertising.

Section 10. Priority will be given to projects on which the authority's loan can be federally guaranteed, or where the authority's financial participation is in conjunction with a federal grant, loan or loan guarantee program. The term of the loan and interest rate shall be, as determined by the authority, those rates which will enable the authority to receive a federal loan guarantee and which will enable the authority to sell the loans on the secondary money market.

Section 11. Should an unguaranteed loan be necessary from the tourist project development fund to make the project feasible, the authority's participation shall be limited to those projects in which:

(1) The borrower holds equity funds in an amount equal to or unencumbered property of an appraised fair market value, equal to a percentage (to be determined by the board) of the total estimated cost of the tourist project which funds or property are available for and shall be applied to the cost of such project; and

(2) The local development agency has obtained from

other financial institutions a firm commitment for all other funds which are necessary for payment of all the estimated costs of the tourist project; and

(3) The sum of these funds is adequate to insure completion of the project.

Section 12. In no instance shall the authority's unguaranteed loan participation exceed fifty (50) percent of the total estimated cost of a tourist project.

HERB LIGON, JR., Chairman

ADOPTED: August 23, 1978

APPROVED: WILLIAM L. SHORT, Secretary

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Rodney P. Dempsey, Executive Director, Development Finance Authority, Suite 300, State National Bank Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Natural Resources
Division of Water Resources

400 KAR 1:021. Selective cutting of timber in the Wild Rivers area.

RELATES TO: KRS 146.200 to 146.360

PURSUANT TO: KRS 13.082, 146.270, 146.290, 146.350, 146.990, 224.033(17)

NECESSITY AND FUNCTION: The Department is authorized to permit selective timber cutting on lands within the boundaries of a designated wild river area pursuant to KRS 146.270. Although KRS 146.290(3) makes provisions for landowners seeking permission for a change of use to permit the selective cutting of individual trees or timber within the Wild Rivers area, this regulation is necessary to establish a permit system for selective cutting of trees within the Kentucky Wild Rivers area when such cutting is desirable for purposes not specifically covered by KRS Chapter 146, and to specify the requirements for all selective cutting permits.

Section 1. Definitions. (1) "Access road" means that access constructed to connect the harvesting activity to the public road system.

(2) "Bureau" means the Bureau of Natural Resources within the Department for Natural Resources and Environmental Protection.

(3) "Commissioner" means the Commissioner of the Bureau of Natural Resources.

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

(5) "Selective cutting" means the mature timber is removed either as single scattered trees or in small groups at relatively short time intervals; such cuttings are repeated indefinitely with the effect of creating or maintaining an uneven-aged stand.

(6) "Skid trail" means a road or trail constructed for purposes of moving the timber from the stump to the landing or concentration yard.

(7) "Slash" means the residue left after the economically usable portions of cut trees are removed from a cutting area.

(8) "Wild Rivers" means those waterways designated by KRS 146.241, or added through the process described in KRS 146.260.

(9) "Wild Rivers area" means a wild river and adjacent lands designated in regulation 400 KAR 1:010.

Section 2. Procedures for Obtaining Permits for Selective Cutting. (1) No person shall cut trees within the designated boundaries of the Wild Rivers area without first obtaining a permit from the bureau.

(2) Application for selective cutting permits shall be on forms available from and supplied by the bureau. A complete application shall consist of the completed application, accompanied by a plan of cutting and logging layout, and any necessary cleanup of the affected area after cutting. The plan must include a map to the scale not greater than one (1) inch equal 500 feet, indicating the location of the operation, the access roads, skid trails, and log landings proposed, and written descriptive explanations which may help clarify planned activities. The application shall be submitted in duplicate to the commissioner.

(3) The bureau will make an on-site inspection of the area proposed for selective cutting, and the permit for selective cutting will be issued or denied subject to the hearing provisions of KRS 224.081 through 224.085, or 146.290 as is appropriate.

(4) The plan submitted will be the instrument for adjudging compliance with the permit.

Section 3. conditions for the Approval of Permits for Selective Cutting. (1) A buffer zone, not to exceed 100 feet, shall be left between the edge of the stream and the area to be selectively cut to prevent an increase in water temperature due to removal of the canopy cover along the stream, to prevent sedimentation resulting from soil erosion that inhibits fish reproduction and alters the stream flow, and to enhance and perpetuate wild fauna and flora along the stream. The bureau may make an exception to the buffer zone for disease or insect control or to enhance aesthetics.

(2) All trees permitted to be cut under the permit will be designated by personnel of the bureau prior to being cut.

(3) Prohibition of damage, resulting to the residual stand of trees, must receive constant attention during felling and logging. Directional felling and direct line winching or pulling of tree products shall be used.

(4) No debris resulting from selective cutting shall be left in the natural waterway of any stream within the Wild Rivers area.

(5) No saw mills or timber processing plant of any kind shall be allowed within the designated boundaries of the Wild Rivers area.

Section 4. Conditions for Approval of Planned Access Roads, Skid Trails, and Landings. (1) Topography, property lines, economic limits on skidding will dictate approximate location and extent of access roads. In alignment, all vertical grades will be kept as low as possible, and all cut and fills shall have side slopes that are stable for the soil or fill material involved. All rock outcrops, ledges, swampy places and other features apt to present difficulties should be avoided. Permanent roads shall be located outside of the Wild Rivers area. Temporary roads necessary for permitted select cutting uses may be located within Wild Rivers areas and shall be constructed with adequate drainage, be maintained to control erosion, and be retired after completion of forest activity. All road surfaces, road

banks, and landings shall be revegetated according to seeding and fertilization rates to be supplied by the bureau.

(2) Skid trail grades shall be kept as low as topography will permit, shall follow a zig-zag path up all slopes, and when possible be built from the top down. Water turnouts shall be installed at specified intervals, and cross drains shall be installed immediately above extra steep pitches and immediately below bank seepage spots. Skid trails shall be maintained prior to conclusion of the forest activity with special attention given during seasonal shutdowns, and at the conclusion of such activity shall be completely eliminated and revegetated with seeding and fertilization recommended by the bureau.

(3) All landings and concentration yards shall have a slope sufficient to allow drainage. Diversion ditches shall be provided around the uphill side of landings where seepage and lateral flow of water is a potential problem. All landings and concentration yards shall be revegetated immediately following completion of forest activity with seeding and fertilization recommended by the bureau.

Section 5. Penalties and Enforcement. Any person who violates any of the provisions of this regulation or who fails to perform the duties imposed by these provisions, or who fails to obtain a permit as required herein, shall be subject to the imposition of the penalties or other relief to be sought in the manner prescribed in KRS 146.350.

EUGENE MOONEY, Secretary

ADOPTED: March 15, 1978

RECEIVED BY LRC: September 15, 1978 at 11:15 a.m.

PUBLIC HEARINGS: A public hearing on this proposed regulation will be held at 9 a.m. EST November 3, 1978, in the auditorium of Capital Plaza Tower, Frankfort, Kentucky 40601. For additional information or submission of comments, please contact: David Rosenbaum, Director, Division of Water Resources, 501 Wilkinson Boulevard, Frankfort, Kentucky 40601.

DEPARTMENT OF JUSTICE Bureau of State Police

502 KAR 20:010. Examination standards.

RELATES TO: KRS 329.030

PURSUANT TO: KRS 15A.160, 329.030

NECESSITY AND FUNCTION: KRS 15A.160 and 329.030(5) provide that the Secretary of the Department of Justice may establish such rules and regulations for examinations for detection of deception examiners. This regulation establishes the standards for such examinations.

Section 1. Within the forty-five (45) day period prior to the expiration of his original license, the trainee must take and pass a written examination as prescribed by the department. If the trainee fails to pass the written examination, the department, at the request of the trainee and his supervisor, may allow the trainee to retake the examination if the department has received a sworn, notarized, written affidavit from the trainee's supervisor that he has given the trainee the additional training necessary, in his opinion, to assure the trainee can pass the examination and at least

thirty (30) days have elapsed since the date of the trainee taking the last examination. If the trainee fails to pass the second examination, the department, upon being shown good cause, may extend the trainee's license and intern program for a period of one (1) year.

Section 2. If a trainee license and intern program are extended by the department, the regulations governing the original intern training program will be followed except that the trainee will be allowed to take the written examination only one (1) additional time, and this must take place within the final thirty (30) day period prior to the expiration of his second trainee license. If the trainee fails to pass the written examination for the third time, his license shall be suspended and he must wait for a period of one (1) year before again applying for such license.

Section 3. The written examination for a detection of deception examiner license shall consist of a combination of essay, multiple choice and true-false questions. A score of seventy (70) percent correct answers shall be considered passing. Examinations will be given at a time and place designated by the department. In addition to the written examination, the department may require each license applicant to demonstrate his competence and proficiency by conducting a polygraph examination under the supervision of a qualified observer(s) appointed by the department. Any applicant for an examiner's license who fails the examination may retake the examination after a period of thirty (30), but not more than forty-five (45), days have elapsed since the first examination. Any applicant for an examiner's license who fails the second examination must wait at least six (6) months before re-applying for a license. An applicant for an examiner's license who presently holds a license as a trainee shall follow the rules and regulations established for such applicants.

Section 4. Suggested reference material from which the necessary information to pass the examination may be obtained is listed below. Other material is available from which such information may be obtained, and the following list is not intended to be an exclusive list of references.

- (1) "Truth and Deception" by Reid and Inbau;
- (2) "Lie Detection and Criminal Interrogation" by Inbau and Reid;
- (3) "The Machinery of the Body" by Carlson, Johnson and Cavert;
- (4) "Abnormal Psychology in the Life Cycle" by Allman and Jaffe;
- (5) "Introduction to Psychology" by Hilgard, Atkinson, and Atkinson;
- (6) Polygraph instrument manuals;
- (7) "Outline of Physiology" by L. L. Langley;
- (8) Kentucky Revised Statutes, Chapter 329 (Detection of Deception Examiners) and related regulations; and
- (9) "Physiology of the Human Body" by J. Robert McClinic.

JOHN L. SMITH, Secretary

ADOPTED: September 7, 1978

RECEIVED BY LRC: September 11, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary of Justice, State Office Building,
Frankfort, Kentucky, 40601.

**DEPARTMENT OF JUSTICE
Bureau of State Police**

502 KAR 20:020. Examiners.

RELATES TO: KRS 329.030

PURSUANT TO: KRS 15A.160, 329.030

NECESSITY AND FUNCTION: KRS 15A.160 and 329.030(6) provide that the Secretary of the Department of Justice may establish such rules and regulations for detection of deception examiners during their period of licensure to insure the examiner maintains adequate professional standards. This regulation establishes the requirements for detection of deception examiners.

Section 1. Advertising, soliciting and discrimination are prohibited except as follows:

(1) An examiner shall not advertise in any manner which would tend to deceive or defraud the public.

(2) An examiner shall not publish directly or indirectly or circulate any fraudulent, false, or misleading statements as to the skill or method of practice of any person or examiner.

(3) An examiner shall not claim superiority over other examiners as to his skill or method of practice.

(4) An examiner shall not divide fees, or agree to split or divide the fees, received for detection of deception services with any person for bringing or referring a client.

(5) An examiner shall not attempt to solicit business as a result of information or statements obtained from an examinee relating to his past employment or employer.

(6) An examiner shall not refuse to render detection of deception services to or for any person solely on account of the race, color, creed, sex, or national origin of such person.

Section 2. (1) The examiner shall inform the prospective examinee that taking the detection of deception examination is a voluntary act and the examiner must obtain the written consent of the examinee to undergo such examination.

(2) The examiner shall not conduct an examination on any person whom he believes, through observation or any other credible evidence, to be physically or psychologically unfit for such an examination at that time.

(3) The examiner shall, immediately upon request of the examinee, terminate an examination in progress.

(4) The examiner shall not render a verbal or written opinion based on chart analysis, until the examinee has had a reasonable opportunity to explain any reactions to pertinent questions.

(5) The examiner shall not interrogate or conduct an examination of an examinee's sexual behavior, or ask any questions that can be construed as being sexually oriented or personally embarrassing to the examinee, regardless of marital status, unless the topic is a specific issue or unless it refers to the basic matter pertinent to the examination.

(6) The examiner shall not conduct an examination when he has reason to believe the examination is intended to circumvent or defy the law.

(7) The examiner shall not knowingly issue, or permit an employee to issue, a polygraph examination report which is misleading, biased or falsified in any way. Each report shall be a factual, impartial and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on analysis of the polygraph charts.

(8) The examiner shall not conduct a polygraph examination without first reviewing the issues to be covered during the examination and the general content of the questions to be asked during the examination with the examinee.

(9) The examiner shall not render a conclusive verbal or written decision, based on chart analysis, as to the truthfulness or deception of the examinee without having administered two (2) or more polygraph charts covering the same relevant issue, unless after the examinee has submitted to one (1) test he refuses to submit to additional tests. The fact of the examinee's refusal shall be noted in the verbal and/or written report of the examination. This shall not preclude the examiner from terminating an examination in progress at his own discretion when, in his opinion, the examinee has become physically or psychologically unfit, or has become uncooperative to the point that it would be useless to continue the examination.

(10) All questions and answers asked during a polygraph examination shall be marked on the polygraph charts at the appropriate place on the chart where the question was asked and the answer given. If a question sheet with numbered questions is used, the number of the asked question along with the answer given shall be noted and the question sheet shall be attached to the polygraph chart and made a part of the examinee's file. Each polygraph chart should be identified as to the person being examined, the examiner, time and date of the examination and the chart number.

(11) The examiner shall not, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal, or psychiatric opinion or which would infringe upon areas under the cognizance of professionals in those fields. This shall not preclude the examiner from describing the appearance or behavior of the examinee, if this is pertinent to the examination, as long as the examiner refrains from offering any diagnosis which he is professionally unqualified to make.

(12) The examiner shall not offer testimony concerning the charts or conclusions presented by another examiner unless he is thoroughly familiar with the techniques and procedures used by the other examiner. This shall not prohibit an examiner from testifying concerning his independent examination of the same examinee.

(13) It shall be the duty of every examiner to report to the department any action or misconduct on the part of another examiner which would be in violation of the provisions of KRS Chapter 329 or the regulations promulgated thereof.

Section 3. (1) The examiner shall maintain on file for at least two (2) years all records, papers, polygraph charts, consent to examination forms, notes, question lists or sheets and reports of polygraph examinations conducted by him.

(2) An examiner who leaves the employment of another examiner, agency, firm, or company shall be allowed access, after showing reasonable cause, to the files of examinations conducted by him during the two (2) year period prior to the date of his request. However, without the approval of the employing examiner, agency, firm or company, the examiner may not remove any of the material contained in the file or make notes of any of the information contained therein.

(3) The department shall, at any time there is just cause, inspect the records, reports, polygraph charts and all paperwork connected with the examination to determine if

an examiner is conducting examinations in accordance with the provisions of KRS Chapter 329 and regulations promulgated by the department.

JOHN L. SMITH, Secretary

ADOPTED: September 7, 1978

RECEIVED BY LRC: September 11, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary of Justice, State Office Building, Frankfort,
Kentucky 40601.

**DEPARTMENT OF JUSTICE
Bureau of State Police**

502 KAR 20:030. Trainees.

RELATES TO: KRS 329.030

PURSUANT TO: KRS 15A.160, 329.030

NECESSITY AND FUNCTION: KRS 15A.160 and 329.030(4) provide that the Secretary of the Department of Justice may establish such rules and regulations for detection of deception trainees during their internship and insure that the trainee meets adequate professional standards. This regulation establishes the requirements for detection of deception trainees.

Section 1. Before a trainee may begin an intern program, he must:

- (1) Be a resident of Kentucky;
- (2) Be licensed as a trainee detection of deception examiner in this state;
- (3) File with the department the name and identifying information of his internship supervisor;
- (4) File with the department a written statement from his supervisor agreeing to undertake the responsibilities for such training and agreeing to abide by regulations adopted by the department; and
- (5) Obtain the department's permission to begin the intern program under the control of the proposed supervisor.

Section 2. The direct, personal supervision and control required by KRS 329.010(2) shall be deemed to have been met under the following conditions.

(1) For the first three (3) months of the intern program, the supervisor must be on the premises where the testing is being conducted by the trainee and is available for instructions and/or consultations with the trainee. At the end of each examination conducted by the trainee, the supervisor will review and critique the polygraph charts of the examination and must place the date of the review and his initials at the end of each chart.

(2) At the end of the first three (3) months of the intern program, and upon the recommendation of the supervisor, the department may allow the trainee to conduct examinations without the supervisor being on the premises at the time of the examination providing that the intern and supervisor meet on at least a weekly basis and the supervisor reviews and critiques the polygraph charts of every examination conducted by the trainee since the previous review session. The supervisor must place the date of the review and his initials at the end of each chart.

(3) At the end of the first six (6) months of the intern program, and upon the recommendation of the supervisor, the department may allow the trainee and the supervisor to

meet on at least a monthly basis providing the supervisor reviews and critiques the polygraph charts of any examination in which the trainee has given an inconclusive or undetermined opinion as to the examinee's truthfulness or deception, or any examination in which the trainee indicates he experienced some difficulty in reaching a decision as to the examinee's truthfulness or deception. In addition, the supervisor will select at random at least five (5) of the polygraph charts of examinations conducted by the trainee since the previous review session for review and critique. The supervisor must place the date of the review and his initials at the end of each chart reviewed. The period for this third phase of the intern program will be six (6) months.

Section 3. The trainee shall be required to properly conduct at least twenty-five (25) specific examinations during the intern program.

Section 4. The trainee and supervisor will make periodic reports to the department, on forms provided by the department, on the trainee's progress during the intern period.

Section 5. The department may request and require inspection and review of the internship program of any licensed examiner supervisor or trainee at any time and in the manner prescribed by the department.

Section 6. If at any time a conflict arises during an internship training program, either the trainee or the supervisor shall have the right to appeal in writing to the department for mediation of the conflict. The department, in its discretion, may call upon any resident licensed examiner, who is qualified to be a trainee supervisor, to assist in any hearings, reviews, or critiques in order to resolve the conflict and reach a satisfactory solution.

Section 7. It shall be the duty of both the trainee and the supervisor to report any infraction or violation of the rules which regulate an intern program to the department for appropriate action.

JOHN L. SMITH, Secretary

ADOPTED: September 7, 1978

RECEIVED BY LRC: September 11, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary of Justice, State Office Building,
Frankfort, Kentucky, 40601.

**DEPARTMENT OF TRANSPORTATION
Bureau of Highways**

603 KAR 3:051. Recyclers.

RELATES TO: KRS 177.905 to 177.950

PURSUANT TO: KRS 13.082, 174.050, 177.912, 177.935

NECESSITY AND FUNCTION: KRS 177.935 authorizes the Bureau of Highways to exercise general supervision of the administration and enforcement of KRS

177.905 to 177.950. This regulation is adopted to enable the Department of Transportation to administer and enforce these requirements. Chapter 114, Acts of 1978 necessitate a new regulation.

Section 1. No person shall operate or cause to be operated any recycling establishment or place of business within 1,000 feet of the right-of-way line of any road as hereinafter defined, except for the following:

(1) Those recycling establishments or places of businesses which comply with KRS 177.905 through 177.950 and these regulations; and

(2) A recycling establishment or place of business which is located in an industrially zoned area and is a conforming land use under applicable zoning ordinances and regulations of any county or city, as determined in the discretion of the Commissioner or Highways.

Section 2. Definitions. (1) "Automobile, vehicle or machinery recyclers" means any place where five (5) or more junked, wrecked or non-operative automobiles, vehicles, machinery or other similar scrap or salvage materials are deposited, parked, placed or otherwise located.

(2) "Bureau" means the Bureau of Highways in the Department of Transportation.

(3) "Commissioner" means the Commissioner of the Bureau of Highways.

(4) "Material recyclers" means any establishment or place of business, including garbage dumps and sanitary landfills, maintained, operated, or used for storing, keeping, buying or selling of old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste, or motor vehicle parts, iron, steel, and other old scrap ferrous or nonferrous material.

(5) "Operator or operators" means any person, firm or corporation operating an automobile, vehicle, machinery or material recycling establishment or place of business or allowing such automobile, vehicle, machinery or material recycling establishment or place of business to be placed, or deposited, or to remain on the premises owned or controlled by such person, firm or corporation.

(6) "Person" means any individual, firm, agency, company, association, partnership, business trust, joint stock company, body politic or corporation.

(7) "Recycling establishment" or "place of business" means any place operated, maintained or allowed to exist by any automobile, vehicle or machinery recyclers or any material recyclers.

(8) "Road" means any county, state, federal or limited access highway or turnpike, including bridges and bridge approaches.

Section 3. General Provisions. (1) No junked, wrecked or inoperable automobiles, vehicles, machinery or material scrap or parts shall be placed, deposited or otherwise located on the right-of-way of any road.

(2) Any recycling establishment or place of business shall be required to be completely hidden from view of the travelling motorist, for 1,000 feet in each direction from the outer limits of the premises or storage area, and to a depth of 1,000 feet from the right-of-way line, along all roads.

(3) Any recycling establishment or place of business which cannot as a practical matter be screened from view of the travelling motorist on all roads must be removed.

(4) The operation of any automobile, vehicle, machinery, or material recycling establishment or place of

business which is located within 1,000 feet of the right-of-way of any road, without a permit from the bureau of Highways, is declared to be a public nuisance.

(5) In the event an operator begins a recycling establishment or place of business in a new location, such location must be screened to comply with provisions of this regulation and have a current permit prior to the establishment thereof.

Section 4. Measurements. (1) In determining the 1,000 feet control distance from the right-of-way, the measurements shall be taken horizontally along a line at the same elevation and at a right angle to the center line of the highway.

(2) In measuring the 1,000 feet from the outer limits of the premises or storage area, in each direction, on all roads, two (2) lines shall be drawn perpendicular to the center line of the main travelled way, so as to cause the two (2) lines to embrace the greatest longitude along the center line of the main travelled way.

Section 5. Standards for Screening. (1) Completed screening must completely hide all junked, wrecked, or inoperable, automobiles, vehicles, machinery, and materials from view of the travelling public on all roads on a year-round basis.

(2) Materials for screening must present an attractive appearance. No wrinkled or bent metal, will be accepted.

(3) The completed screening must present a neat and clean appearance.

(4) Piecing out of metal or wood panels or patchwork type screening will not be accepted.

(5) Unless a continuous overall neat design is created, all metal or wood panels must be erected vertically.

(6) Fencing used for screening must be of uniform height and alignment unless a variation is approved by the Bureau of Highways.

(7) Completed screening must blend with the surrounding area as much as possible.

(8) In the event fencing materials must be painted in order to blend with the surrounding area, the colors and shades of buildings and other structures in the area may be taken into account, in determining the color and shade to be used on such fencing materials.

(9) If a building or other structure is to be used as a portion of the screening, the building or structure may be required to be painted, if it is deemed necessary, in order to blend with the other portions of screening and the surrounding area.

(10) If screening is to be effected by the use of plantings of trees or shrubs, the plantings to be used must be of sufficient height and density to immediately screen the recycling establishment or place of business from view of the travelling motorists on all roads.

(11) If screening by the use of plantings of trees and shrubs are not sufficient in height and density at the time of installation, a temporary screen must be erected and remain until such time as trees and shrubs are of sufficient height and density to screen the premises on a year round basis.

(12) Any operator of a recycling establishment or place of business shall file an application for a permit from the Bureau of Highways. A plot detailing the area to be used for the storing or keeping of recycling material, automobiles, vehicles or machinery, the location, height, length, kind of material to be used for screening and color of paint if required, shall accompany and be made a part of the application.

(13) Approval of a screening proposal should be obtained from the Bureau of Highways prior to the erection of fencing or the planting of trees or shrubs to effect the screening required to hide the storage area from view of the travelling public. Failure to obtain such approval may result in the necessity of removing and re-erecting part or all screening in order to comply with standards for screening as set forth in this section.

Section 6. Requirements for Permit. (1) A permit is required for the operation of a recycling establishment or place of business.

(2) Permits shall be issued in the following manner:

(a) Permits shall be issued for a two (2) year period, or portion thereof, beginning on July 1 of even numbered years.

(b) Any recycling establishment or place of business existing or in operation on July 1 of even numbered years must remit the full permit fee regardless of the date of compliance with the Kentucky law and regulations.

(c) Any new recycling establishment or place of business which comes into existence after July 1 of even numbered years must remit a permit fee on a prorated basis as of the beginning date of the operation regardless of the date of compliance with the Kentucky law and regulations.

(d) The permit fee shall be fifty dollars (\$50) for the two (2) year period.

(e) The permit fee shall be two dollars and eight cents (\$2.08) per month for each month remaining in the two (2) year period, upon the beginning of a new operation.

(f) Permit fees must be in the form of a check or money order payable to the "Treasurer, Commonwealth of Kentucky."

(g) Cash for permit fees will not be accepted.

(h) Permit fees will not be accepted until the recycling establishment or place of business is in full compliance with the Kentucky law and regulations.

Section 7. Revocation of Permits. (1) Failure to comply with the Kentucky law and regulations shall be cause for the revocation of a permit.

(2) If a recycling establishment or place of business is found to be not in compliance, a reasonable time period shall be allowed for the operator to comply with Kentucky law and regulations.

Section 8. 603 KAR 3:050 is hereby repealed.

CALVIN G. GRAYSON, Secretary

ADOPTED: August 1, 1978

APPROVED:

ED W. HANCOCK

Deputy Secretary for Legal Affairs

RECEIVED BY LRC: August 17, 1978 at 2:45 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Ed W. Hancock, Deputy Secretary for Legal Affairs,
Department of Transportation, Frankfort, Kentucky
40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Kentucky Occupational Safety and Health Program

803 KAR 2:018. Refuse collection and compaction equipment standards.

RELATES TO: KRS Chapter 338

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051 and 338.061, the following regulation is adopted. The function of this regulation is to set forth minimum safety requirements for employees with respect to the use and operation of refuse collection and compaction equipment.

Section 1. The Occupational Safety and Health Standards Board hereby adopts the safety and health standards as printed in the American National Standards Institute (ANSI) Z 245.1-1975, safety requirements for refuse collection and compaction equipment. The employer shall comply with the requirements as specified in this regulation. These standards are hereby adopted by reference with the following additions, exceptions and deletions.

(1) Certain definitions as found in ANSI Z 245.1-1975, Section 2. "General Definitions" shall be revised as follows:

(a) "Employee" means any person employed except those employees excluded in KRS 338.021.

(b) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(c) "Hazardous" means any practice or condition in a place of employment which may be deemed detrimental to the safety and health of employees.

(d) "Person" means any individual, public or private corporation, political subdivision, co-partnership, association, firm, estate, or other entity whatsoever, but not to include an individual employed as "maintenance personnel" or "operators" as defined in ANSI Z 245.1-1975.

Section 2. Purpose and Application. (1) The purpose of this regulation is to provide in accordance with KRS Chapter 338.011, minimum safety and health standards for the protection of employee with respect to the one and operation of refuse collection and compaction equipment.

(2) This adopted standard will provide specific guidelines to employers which will assist them in the purchase of new, used or modified equipment.

(3) This regulation will advise employers in the necessary safety requirements with respect to manufacturing specifications, installation, modification, maintenance and operation of refuse collection and compaction equipment.

(4) This regulation shall not pre-empt nor preclude any specific safety or health applicable standard in effect.

(5) Unless otherwise provided, this adopted standard is intended primarily to apply to new or modified, stationary or mobile, refuse collection and compaction equipment. All modifications to existing equipment shall be made in accordance with this regulation.

(6) Where safety standards have been adopted by any public agency or private concern, this regulation does not modify any provision of such standard unless this regulation imposes greater restrictions, in which case the provisions of this regulation shall prevail.

Section 3. Reference. A copy of the American National

Standards Institute (ANSI) Z 245.1-1975, incorporated by reference, may be obtained for a fee from the American National Standards Institute, Incorporated, 1430 Broadway, New York, New York 10018 or available for review at the Department of Labor, Frankfort, Kentucky 40601 or at a public library in Kentucky.

Section 4. Effective Date. (1) The provisions contained within ANSI Z 245.1-1975 as adopted by this regulation relating to all new mobile compaction equipment and all new stationary compaction equipment are effective January 1, 1980.

(2) The provisions as discussed in ANSI Z 245.1-1975 as adopted by this regulation, found in Paragraphs 5.1.3; 5.2; 6.1.(1), (3), (4), (5) and (7); and 6.2 relating to existing mobile equipment as well as Paragraphs 5.1.3; 5.2; 5.5; 6.1.2(1), (2), (3), (5) and (8) and 6.2 relating to existing stationary equipment shall be effective January 1, 1980. All other paragraphs within this ANSI Z 245.1-1975 do not apply to existing equipment.

JAMES R. YOCOM, Commissioner

ADOPTED: August 24, 1978

APPROVED: MIKE HELTON, Secretary

RECEIVED BY LRC: September 15, 1978 at 12:45 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Executive Director, Kentucky Department of Labor,
Occupational Safety and Health, U.S. 127 South,
Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES Bureau for Administrative Services

901 KAR 1:035. Schedule V substances.

RELATES TO: KRS Chapter 218A

PURSUANT TO: KRS 13.082, 194.050, 211.090

NECESSITY AND FUNCTION: KRS 218A.120 authorizes the Department for Human Resources to place a substance in Schedule V under the Kentucky Controlled Substances Act if it finds that: (1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV; (2) The substance has currently accepted medical use in treatment in the United States; and (3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

Section 1. Schedule V Controlled Substances. The Department for Human Resources hereby designates as "Schedule V" controlled substances, in addition to those specified by KRS 218A.130, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers,

and salts of isomers is possible within the specific chemical designation:

- (1) Diphenoxylate; and
- (2) Loperamide.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 15, 1978

RECEIVED BY LRC: September 15, 1978 at 3:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, 275 East Main
Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES Bureau for Health Services

902 KAR 13:010. Definitions.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

PURSUANT TO: KRS 13.082, 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Department for Human Resources to adopt rules and regulations relating to Emergency Medical Technicians. The function of this regulation is to define terms that are used in regulations promulgated by the department relating to Emergency Medical Technicians.

Section 1. Definitions. As used in department regulations relating to EMTs, the following terms shall have the meanings set forth below unless the context requires otherwise:

(1) "Applicant" means any person applying for training or certification as an EMT under this regulation;

(2) "Department" means the Department for Human Resources;

(3) "Certificate" means the certificate issued by the department pursuant to this regulation to any individual qualifying pursuant to this regulation to perform the duties of any EMT;

(4) "Certified" means one who holds a certificate issued pursuant to this regulation;

(5) "Committee" means the Emergency Medical Technician's Training Advisory Committee as appointed by the Secretary for the Department for Human Resources to act in an advisory capacity;

(6) "Emergency situation" means an unforeseen circumstance or combination of circumstances, regardless of place of occurrence, requiring immediate and continued medical response and intervention to safeguard the life or physical well-being of any patient;

(7) "Emergency Medical Technician (EMT)" means a qualified individual currently certified by the Kentucky Department for Human Resources as an emergency medical technician or as an emergency medical technician-ambulance;

(8) "Emergency Medical Technician Instructor" means a person qualified to teach emergency medical technician courses and who is certified to do so by the Kentucky Department for Human Resources;

(9) "Emergency Medical Technician Instructor Trainee" means a certified emergency medical technician undergoing approved instruction and evaluation as an emergency medical technician instructor under the supervi-

sion of a certified emergency medical technician instructor;
 (10) "Emergency Medical Technician Instructor Trainer" means a person certified by the department to teach emergency medical technician instructor courses and evaluate emergency medical technician instructor trainees;

(11) "Implementing Agency" means any public or private organization approved by the department, other than an instructor, instructor trainee, or instructor trainer, who is conducting, supervising, coordinating, or otherwise operating an emergency medical technician training course.

ROBERT SLATON, Commissioner
 PETER D. CONN, Secretary

ADOPTED: September 15, 1978

RECEIVED BY LRC: September 15, 1978 at 3:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
 TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES Bureau for Health Services

902 KAR 13:020. Applicants' requirements; priority for training.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

PURSUANT TO: KRS 13.082, 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Department for Human Resources to adopt rules and regulations relating to Emergency Medical Technicians. The function of this regulation is to establish requirements for applicants and priority of applicants for training.

Section 1. Requirements for Applicants. Each applicant shall:

- (1) Be eighteen (18) years of age or older;
- (2) Hold a valid motor vehicle operator's license;
- (3) Be of good moral character;
- (4) Not be habitually addicted to or an abuser of alcoholic beverages, drugs, or controlled substances;
- (5) Understand and be able to read, speak, and write the English language;
- (6) Submit a signed application on a form prescribed by the department.

Section 2. Priority of Applicants for Training. (1) The priority of applicants for training in courses offered to the public by implementing agencies which are open to the public and not otherwise exempted by the department shall be according to the following priorities:

- (a) First priority: Ambulance personnel;
 - (b) Second priority: Emergency room personnel;
 - (c) Third priority: Related EMS personnel, including but not limited to, public safety agencies, rescue and extrication, industrial safety, nursing personnel, and certified public school teachers designated as first aid personnel;
 - (d) Fourth priority: All others.
- (2) Applications shall be filed with the implementing agency ten (10) working days prior to the beginning of the

course. The final selection of applicants for each course shall be made by the regional EMS coordinator.

ROBERT STATON, Commissioner
 PETER D. CONN, Secretary

ADOPTED: September 15, 1978

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SUBMIT COMMENT OR REQUEST FOR HEARING
 TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES Bureau for Health Services

902 KAR 13:030. Fees.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

PURSUANT TO: KRS 13.082, 211.964, 211.966

NECESSITY AND FUNCTION: KRS 211.964 directs the Department for Human Resources to adopt rules and regulations relating to Emergency Medical Technicians and 211.966 permits the Department for Human Resources to prescribe a schedule of fees and charges for services to Emergency Medical Technicians. The function of this regulation is to establish a fee schedule.

Section 1. Fees. The following schedule of fees is established pursuant to KRS 211.966:

- (1) Examination fee: \$10.00;
- (2) Re-examination fee: 5.00;
- (3) Renewal fee: 10.00;
- (4) Fee for duplicate certificate: 5.00;
- (5) EMT state shoulder patch: 1.00.

ROBERT SLATON, Commissioner
 PETER D. CONN, Secretary

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DEPARTMENT FOR HUMAN RESOURCES Bureau for Health Services

902 KAR 13:040. Exemptions.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

PURSUANT TO: KRS 13.082, 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Department for Human Resources to adopt rules and regulations relating to Emergency Medical Technicians. The function of this regulation is to define exemptions from the department's EMT regulations.

Section 1. Exemptions from EMT Regulations. The provisions of the department's regulations requiring the

certification of emergency medical technicians shall not apply to:

(1) United States military corpsmen while engaged in the performance within this state of their official duties under federal laws; and

(2) EMTs certified in another state who infrequently come into Kentucky to transport patients inside, through, or outside the State of Kentucky.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

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DEPARTMENT FOR HUMAN RESOURCES Bureau for Health Services

902 KAR 13:050. Training, examination and certification.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

PURSUANT TO: KRS 13.082, 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Department for Human Resources to adopt rules and regulations relating to Emergency Medical Technicians. The function of this regulation is to establish requirements for training; examinations, certifications; and renewal and recertification of Emergency Medical Technicians.

Section 1. EMT Training Course Requirements. The training course shall:

(1) Include the U.S. Department of Transportation curriculum and such additions to the curriculum as prescribed by the department;

(2) Be at least eight-seven (87) hours in duration;

(3) Not be started until all equipment, texts, television tapes, and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;

(4) Not share equipment between courses unless such equipment is housed in the same building and is available equally to all EMT classes;

(5) Utilize equipment, texts, television tapes and other materials approved by the department;

(6) Be taught by an EMT instructor certified by the Department for Human Resources;

(7) Have at least one (1) EMT instructor-trainee; or one (1) additional EMT instructor;

(8) Have a class certification number assigned by the department;

(9) Be limited to thirty (30) students; and

(10) Not permit more than one (1) lesson absence per student, unless made up at the discretion of the instructor, or made up in a subsequent EMT training course.

Section 2. EMT Certification Examination. The department shall prescribe the format and content of the EMT's certification examinations which shall consist of two (2) parts:

(1) Written. The written examination shall be in four (4) parts. An overall passing grade of seventy-five percent (75%), shall be required. In the event an applicant's overall average is less than seventy-five percent (75%), but is seventy percent (70%) or more, the applicant may, upon proper application, retake the part in which he made the lowest score. However, should the applicant again fail, he shall be required to re-take the entire EMT training course before being eligible for re-examination.

(2) Practical. The applicant shall successfully pass all parts of the final practical examination. In the event he fails to successfully pass all portions of the final practical examination, he shall be permitted one (1) opportunity to re-take the part which he failed to pass. However, should the applicant again fail to pass the particular part of the examination, he shall be required to re-take the entire EMT training course before being eligible for re-examination.

Section 3. Certification of EMTs and EMT-A. The department shall certify EMTs based upon the type of service to be rendered. An EMT engaged in ambulance service shall be issued certification as an "Emergency Medical Technician-Ambulance (EMT-A)."

Section 4. Expiration of Certification. All EMT certificates shall expire two (2) years from the date of issuance.

Section 5. Renewal of Certification. In order to renew a certificate, the Emergency Medical Technician shall successfully pass a written and practical renewal examination, prescribed by the department. Renewal examinations shall be subject to the same conditions as the original certification examinations.

Section 6. Temporary Extension of Certificate. Upon a showing of undue hardship in retaking the required examinations for renewal, the department may extend a certificate for an additional six (6) months.

Section 7. Emergency Medical Technicians Certified in Other States and U.S. Military corpsmen. Upon proper application, and upon payment of the prescribed fee, the following may take the Kentucky "Challenge Examination," consisting of both written and practical parts, for certification as an EMT:

(1) U.S. Military Corpsmen, within a period of one (1) year from the date of discharge, who have either a:

(a) U.S. Army MOS 91B or 91C; or

(b) Its equivalent for other services.

(2) Emergency Medical Technicians, currently certified in other states.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

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TO: Secretary for Human Resources, 275 East Main
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**DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services**

902 KAR 13:060. Status of certifications.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
PURSUANT TO: KRS 13.082, 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Department for Human Resources to adopt rules and regulations relating to Emergency Medical Technicians. The function of this regulation is to clarify the legal status of all certificates issued by the Department for Human Resources prior to June 17, 1978, relating to EMTs, EMT-Instructors, and EMT-Instructor-Trainers.

Section 1. Status of Certifications Issued by the Department Prior to June 17, 1978. All certifications issued by the department prior to June 17, 1978, relating to EMTs, EMT-Instructors and EMT-Instructor-Trainers that have not lapsed, by the terms thereof, are hereby declared to be valid and shall continue in full force and effect, subject to the terms and conditions of these regulations.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 14, 1978

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TO: Secretary for Human Resources, 275 East Main
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**DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services**

902 KAR 13:070. Instructors and trainers.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
PURSUANT TO: KRS 13.082, 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Department for Human Resources to adopt rules and regulations relating to Emergency Medical Technicians. The function of this regulation is to establish requirements for attaining certifications as an Emergency Medical Technician-Instructor and Emergency Medical Technician Instructor-Trainer.

Section 1. No person shall hold himself out as an EMT-Instructor unless he has:

- (1) Been certified as an EMT by the department;
- (2) Been recommended by a certified EMT-instructor as having outstanding ability in the EMT field;
- (3) Attended an approved EMT-training seminar and successfully passed a written proficiency examination;
- (4) Assisted an EMT-instructor for a minimum of one (1) complete EMT training course in which he:
 - (a) Participated in the conduct of each lesson;
 - (b) Conducted, under supervision, at least one (1) complete lesson during the course;
 - (c) Served as a small-group instructor during practical exercises;
 - (d) Conducted class demonstrations of manipulative skills;

(e) Performed other related duties as directed by the EMT-instructor;

(f) Been recommended, in writing, for final evaluation by the EMT-instructor, upon completion of the course; and

(5) Been evaluated by a panel of EMT-instructor-trainers, and received a score of eighty percent (80%) or higher.

Section 2. Re-evaluation of Instructor-Trainees by Panel. In the event an EMT-instructor-trainee fails to score eighty percent (80%) or higher on his initial evaluation, he shall be given another opportunity, upon application, to be re-evaluated. In the event he again fails to obtain a score of eighty percent (80%) or higher, but scores at least seventy percent (70%) or higher, he shall, upon application, be given a final opportunity. In no event, however, shall an applicant be evaluated more than three (3) times.

Section 3. Certification of EMT-Instructor-Trainers. No person shall hold himself out as an EMT-instructor-trainer unless he has:

(1) Complied with all requirements of Section 1 of this regulation; and

(2) Been evaluated by the EMT Advisory Committee and recommended to the department for certification as an EMT-instructor-trainer.

Section 4. Renewal of EMT-Instructor Certification. An EMT-instructor's certification shall become invalid two (2) years from the date of issue unless renewed. In order to obtain renewal, the EMT-instructor shall:

(1) Annually attend an instructor's seminar approved by the department, unless excused by the department for justifiable cause; and

(2) Teach an EMT course during the preceding two (2) year period; or

(3) Conduct a renewal, challenge, or final practical examination in relation to an EMT course.

Section 5. EMTs-Instructors Certified in Other States. Upon proper application, EMTs-instructors certified in other states may take the Kentucky "Challenge Examination" consisting of both written and practical parts for certification as an EMT. In addition, such persons shall meet the requirements of Sections 1 and 2 of this regulation.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

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**DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services**

902 KAR 13:080. Authorized procedures.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
PURSUANT TO: KRS 13.082, 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Department for Human Resources to adopt rules and

regulations relating to Emergency Medical Technicians. The function of this regulation is to establish procedures which EMTs are authorized to perform.

Section 1. Authorized Certified EMT Procedures. (1) Except as otherwise provided in subsection (2) of this section, certified EMTs may perform any of the procedures as set forth in the "Basic Training Course for Emergency Medical Technicians," August 1976 Edition, published by the United States Department of Transportation, National Highway and Traffic Safety Administration, Washington, D. C. 20590, and in the accompanying text entitled "Emergency Care and Transportation of the Sick and Injured," 1977 Edition, published by the American Academy of Orthopaedic Surgeons, 430 North Michigan Avenue, Chicago, Illinois 60611. A copy of both publications shall be on file in the office of the Emergency Medical Services Branch, Bureau for Health Services, Department for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601, and shall be available for public inspection.

(2) EMTs shall not perform any of the following procedures:

- (a) The administration of intravenous fluids or plasma expanders, or both;
- (b) Perform circo-thyroidotomies;
- (c) Relieve a tension pneumothorax through the use of needles.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

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TO: Secretary for Human Resources, 275 E. Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES Bureau for Health Services

902 KAR 13:090. Disciplinary actions.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

PURSUANT TO: KRS 13.082, 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Department for Human Resources to adopt rules and regulations relating to Emergency Medical Technicians. The function of this regulation is to establish procedures for taking disciplinary action against certified Emergency Medical Technicians and Emergency Medical Technician-Instructors.

Section 1. Denial, revocation, and suspension of certificates. The department may deny, revoke, or suspend the certificate of any person who:

- (1) Has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;
- (2) Becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);
- (3) Becomes an alcoholic person who suffers from alcoholism as defined in KRS 222.011(3);
- (4) Develops such physical or mental disability or other condition that continued practice or performance of his

duties may be dangerous to patients or the public; or

(5) Fails to comply with any regulation of the department relating to the certification of EMTs.

Section 2. Hearings. The department shall furnish the certificate holder with written notice setting out the substance of each offense charged with sufficient detail to reasonably apprise such person of the nature, time and place thereof. The certificate holder shall have the right to be present in person or be represented by counsel, and to present evidence and to be heard in opposition to the charges which may be instituted. The department shall make a finding of fact and conclusion of law. The hearing may be conducted by a hearing officer appointed by the department.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 15, 1978

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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

902 KAR 100:142. Wireline service operations.

RELATES TO: KRS 211.840 to 211.852, 211.990(4)

PURSUANT TO: KRS 13.082, 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: The Department for Human Resources is empowered by KRS 211.840 to regulate the possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this regulation is to provide radiation safety requirements for persons using sources of radiation for wireline service operations, radioactive markers, mineral exploration and subsurface tracer studies.

Section 1. Applicability. The requirements in this regulation apply to all licensees or registrants who use sources of radiation for wireline service operations, radioactive markers, mineral exploration and subsurface tracer studies.

Section 2. Prohibition. No licensee shall perform wireline service operations with a sealed source(s) in any well or wellbore unless prior to commencement of the operation, the licensee has a written agreement with the well operator, well owner or land owner, as appropriate, that:

- (1) In the event a sealed source is lost downhole, a reasonable effort at recovery will be made.
- (2) In the event a decision is made to abandon the sealed source downhole, the requirements of this regulation shall be met.

Section 3. Limits on Levels of Radiation. Radioactive materials shall be used, stored, and transported in such a manner that the requirements of 902 KAR 100:020 as applicable, are met.

Section 4. Storage Precautions. (1) Each source of radiation shall be provided with a lockable storage or transport container. The container shall be provided with a lock (or tamper seal for calibration sources) to prevent unauthorized removal of or exposure to the source of radiation.

(2) Sources of radiation shall be stored in a manner which will minimize the danger from explosion or fire.

Section 5. Transport Precautions. Transport containers shall be physically secured to the transporting vehicle to prevent accidental loss, tampering or unauthorized removal.

Section 6. Radiation Survey Instruments. (1) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments to make physical radiation surveys as required by this regulation and by 902 KAR 100:020. Instrumentation required by this part shall have a range of at least 0.1 milliroentgen per hour through twenty (20) milliroentgens per hour.

(2) Each radiation survey instrument shall be calibrated:

(a) At intervals not to exceed six (6) months and after each instrument servicing;

(b) At energies and exposure levels appropriate for use; and

(c) Such that accuracy within plus or minus twenty (20) percent of the true radiation level can be demonstrated on each scale.

(3) Records of calibration shall be maintained for a period of two (2) years for inspection by the department.

Section 7. Leak Testing of Sealed Sources. Sealed sources of radioactive material shall be tested for leakage and contamination in accordance with 902 KAR 100:060 and 902 KAR 100:095.

Section 8. Quarterly Inventory. Each licensee or registrant shall conduct a quarterly physical inventory to account for all sources of radiation, except tracer materials, received or possessed by him. Records of inventories shall be maintained for two (2) years from the date of the inventory for inspection by the department and shall include the quantities and kinds of sources of radiation, the location where sources of radiation are assigned, the date of the inventory, and the name of the individual conducting the inventory.

Section 9. Utilization Records. Each licensee or registrant shall maintain current records, which shall be kept available for inspection by the department for two (2) years from the date of the recorded event showing the following information for each source of radiation:

(1) A description (or make and model number or serial number) of each source of radiation used;

(2) The identity of the individual of field unit to whom assigned;

(3) Locations where used and dates of use; and

(4) In the case of tracer materials and radioactive markers, the utilization record shall also indicate the activity of radioactive materials used at a particular well site.

Section 10. Design and Performance Criteria for Sealed Sources Used in Downhole Operations. (1) After January 1, 1980, each sealed source used in downhole operations shall, as a minimum, meet the following criteria:

(a) Be of double encapsulated construction;

(b) Contain radioactive material whose chemical or

physical form is as insoluble and non-dispersible as practicable; and

(c) Have been individually pressure tested to 25,000 pounds per square inch (absolute) without failure.

(2) For sealed sources manufactured after the effective date of this regulation, in the absence of a certificate from a transferor certifying that an individual sealed source meets the above criteria, the sealed source shall not be put into use until such determinations and testing have been performed.

(3) Certification documents shall be maintained for inspection by the department for a period of two (2) years after source disposal except for sources abandoned downhole, in which case such documents shall be maintained until their disposal is authorized by the department.

Section 11. Labeling. (1) Each source, source holder, or logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label which has, as a minimum, the standard radiation symbol without color requirement and the following wording: Danger (or Caution) Radioactive-Do not handle Notify civil authorities (or name of company). This labeling shall be on the smallest component, i.e., source, source holder, or logging tool, that is transported as a separate piece of equipment.

(2) Each transport container shall have permanently attached to it a durable legible and clearly visible label which has, as a minimum, the standard radiation symbol and the following wording: Danger (or Caution) Radioactive-Notify civil authorities (or name of company) if found.

Section 12. Inspection and Maintenance. (1) Each licensee or registrant shall conduct, at intervals not to exceed six (6) months, a program of inspection of sealed sources and inspection and maintenance of source holders, source handling tools, storage containers, transport containers, and injection tools to assure proper labeling, operation, and physical condition. Records of inspection and maintenance shall be maintained for a period of two (2) years for inspection by the department.

(2) If any inspection conducted pursuant to this section reveals damage to labeling or components critical to radiation safety, the device shall be removed from service, until repairs have been made.

(3) The repair, opening, or any other modification of any sealed source shall be performed only by persons specifically authorized to do so by the department, the U. S. Nuclear Regulatory Commission, or another agreement state.

Section 13. Training Requirements. (1) No licensee or registrant shall permit any individual to act as a logging engineer until such individual:

(a) Has successfully completed a course recognized by the department, another agreement state, or the U. S. Nuclear Regulatory Commission, covering the subjects outlined in Section 24 of this regulation and shall have demonstrated an understanding thereof;

(b) Has received copies of and demonstrated an understanding of the following:

1. The requirements contained in this regulation;

2. Other applicable provisions of the department's radiation regulations;

3. The conditions of the license or registration certificate issued by the department; and

4. The licensee's or registrant's approved operating and emergency procedures; and

(c) Has demonstrated competence to use sources of radiation, related handling tools and radiation survey instruments which will be employed in his assignment.

(2) No licensee or registrant shall permit any individual to assist in the handling of sources of radiation until such individual:

(a) Has read and received instruction in the licensee's or registrant's operating and emergency procedures and shall have demonstrated understanding thereof; and

(b) Has demonstrated competence to use, under the personal supervision of the logging engineer, the sources of radiation, related handling tools and radiation survey instruments which will be employed in his assignment.

(3) Each licensee or registrant shall maintain, for inspection by the department, and until it authorizes their disposal, records of training and testing which demonstrates that the requirements of this section are met.

Section 14. Operating and Emergency Procedures. The licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(1) The handling and use of sources of radiation to be employed such that no individual is likely to be exposed to radiation doses in excess of the limits established in 902 KAR 100:020;

(2) Methods and occasions for conducting radiation surveys;

(3) Methods and occasions for locking and securing sources of radiation;

(4) Personnel monitoring and the use of personnel monitoring equipment;

(5) Transportation to field locations, including packing of sources of radiation in the vehicles, posting of vehicles and securing of sources of radiation during transportation;

(6) Minimizing exposure of individuals in the event of an accident;

(7) The procedure for notifying proper personnel in the event of an accident;

(8) Maintenance of records;

(9) The inspection of sealed sources and the inspection and maintenance of source holders, source handling tools, storage containers, transport containers, and injection tools;

(10) The procedures to be followed in the event a sealed source is lost downhole; and

(11) The procedures to be used for picking up, receiving, and opening packages containing radioactive material.

Section 15. Personnel Monitoring. (1) No licensee or registrant shall permit any individual to act as a logging engineer or assistant unless each such individual wears either a film badge or a thermoluminescent dosimeter (TLD) at all times during well service operations utilizing sources of radiation. Each film badge or thermoluminescent dosimeter (TLD) shall be assigned and worn by only one (1) individual.

(2) Personnel monitoring records shall be maintained for inspection by the department until it authorizes their disposal.

Section 16. Security. During each logging or tracer application, the logging engineer or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized or unnecessary entry into a restricted area.

Section 17. Handling Tools. The licensee shall provide and require the use of tools that will assure remote handling

of sealed sources other than low activity calibration sources.

Section 18. Tracer Studies. (1) Protective gloves and other protective clothing, as appropriate, shall be used by all personnel handling radioactive tracer material. Care shall be taken to avoid ingestion or inhalation of radioactive material.

(2) No licensee shall permit injection of radioactive material into potable aquifers without prior authorization from the department.

Section 19. Particle Accelerators. No licensee or registrant shall permit above-ground testing of particle accelerators which results in the production of radiation except in areas or facilities controlled or shielded so that the requirements of 902 KAR 100:020 are met.

Section 20. Radiation Surveys. (1) Radiation surveys or calculations shall be made and recorded of each area where radioactive materials are stored.

(2) Radiation surveys or calculations shall be made and recorded of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials. Such surveys shall include each source of radiation and combination of sources of radiation transported in the vehicle.

(3) Radiation surveys shall be made and recorded at the job site or well head of each tracer operation and of each logging operation utilizing sealed sources not meeting the sealed source design and performance criteria specified in Section 10 (except for those using Hydrogen 3, Carbon-14, and Sulfur-35). At tracer jobs, a radiation survey instrument shall be used. Such surveys shall include radiation levels prior to and after the operation.

(4) Records required pursuant to this section, shall be in units of millirem per hour and include the dates, the identification of individuals(s) making the record, a unique identification of survey instrument(s) used and an exact description of the location of the survey. Records of these surveys shall be maintained for inspection by the department for two (2) years after completion of the survey.

Section 21. Records Required at Field Stations. Each licensee or registrant maintaining field stations from which well service operations are conducted shall have copies of the following records available at each station for inspection by the department:

(1) Appropriate license or certificate of registration;

(2) Operating and emergency procedures;

(3) Applicable regulations;

(4) Survey records required pursuant to Section 20 of this regulation;

(5) Quarterly inventories required pursuant to Section 8 of this regulation;

(6) Utilization records required pursuant to Section 9 of this regulation;

(7) Records of inspection and maintenance required pursuant to Section 12 of this regulation;

(8) Records of the latest survey instrument calibration and leak test for the specific devices and sources at the field station.

Section 22. Records Required at Temporary Job Sites. (1) Each licensee or registrant conducting well service operations at a temporary job site shall have the following records available at that site for inspection by the department:

- (a) Operating and emergency procedures;
- (b) Survey records required pursuant to Section 20 for the period of operation at the site; and
- (c) Evidence of current calibration for the radiation survey instruments in use at the site.

(2) In addition to the record requirements of this section, at each temporary job site where well service operations are being conducted under department authorization granted pursuant to 902 KAR 100:065, the following records shall be available for inspection by the department:

- (a) Current leak test records for the sealed sources in use at the site; and
- (b) The appropriate license, certification of registration or equivalent document.

Section 23. Notification of Incidents and Lost Sources.

(1) Notification of incidents and sources lost in other than downhole logging operations shall be made in accordance with appropriate provisions of the department's radiation regulations.

(2) Whenever it appears that a sealed source or device containing radioactive material lost downhole may not be recovered, the licensee shall notify the department by telephone or telegraph, giving the circumstances of the loss. The licensee shall propose a method of abandonment of the source(s) for approval by the department and a letter of confirmation shall follow within thirty (30) days of abandonment.

(3) When it becomes apparent that efforts to recover the radioactive source will not be successful, the licensee shall advise the well-operator of the regulations regarding abandonment and an appropriate method of abandonment which shall include:

- (a) The immobilization and sealing in place of the radioactive source with a cement plug;
- (b) The setting of a whipstock or other deflection device; and
- (c) The mounting of a permanent identification plaque, containing information required by this section, at the surface of the well.

(4) Whenever a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque for posting the well or wellbore. This plaque shall:

- (a) Be constructed of long-lasting material such as stainless steel, brass, bronze or monel. The size of the plaque should be convenient for use on active or inactive wells; e.g., a seven (7) inch square. Letter size of the word "Caution" should be approximately twice the letter size of the rest of the information; e.g., one-half (1/2) inch and one-fourth (1/4) inch letter size, respectively.

(b) Contain the following engraved information on its face:

1. The word "Caution;"
2. The radiation symbol (color not required);
3. The date of abandonment;
4. The name of the well operator;
5. The well name and well identification number(s) or other designation;
6. The sealed source(s) (radionuclide, and quantity of activity);
7. The source depth, and the plug back depth;
8. An appropriate warning, depending on the specific circumstances of each abandonment, such as "do not drill below plug depth;" or "do not enlarge casing;" and
9. The words "Do not re-enter hole before contacting the Radiation Control Branch, Kentucky Department for Human Resources."

- (c) Be welded or bolted to the well-head structure.

Section 24. Minimum Training Requirements for Logging Engineers. All logging engineers shall receive minimum training in the following areas:

- (1) Fundamentals of radiation safety:
 - (a) Characteristics of gamma, neutron and x-radiation;
 - (b) Units of radiation dose (mrem) and quantity of radioactivity (curie); and
 - (c) Significance of radiation dose:
 1. Radiation protection standards, and
 2. Biological effects of radiation dose.
 - (d) Levels of radiation from sources of radiation.
 - (e) Methods of controlling radiation dose:
 1. Working time,
 2. Working distance, and
 3. Shielding.
- (2) Radiation detection instrumentation to be used:
 - (a) Use of radiation survey instruments:
 1. Operation,
 2. Calibration, and
 3. Limitations.
 - (b) Survey techniques.
 - (c) Use of personnel monitoring equipment.
- (3) Equipment to be used:
 - (a) Remote handling equipment.
 - (b) Sources of radiation.
 - (c) Storage and transport containers.
 - (d) Operation and control of equipment.
- (4) The requirements of pertinent federal and state regulations.
- (5) The licensee's or registrant's written operating and emergency procedures.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 15, 1978

RECEIVED BY LRC: September 15, 1978 at 3:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, 275 East Main
Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES Bureau for Social Insurance

904 KAR 1:032. Dual licensed pediatric facility services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 195.050

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the department, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to skilled nursing services and intermediate care nursing services provided in a dual licensed pediatric facility for which payment shall be made by the medical assistance program in behalf of both the categorically needy and medically needy.

Section 1. Definition: A dual licensed pediatric facility is any facility providing skilled nursing facility services and intermediate care facility services to children under age twenty-one (21) only in beds at least a portion of which are dually licensed, i.e., are licensed so that both skilled and intermediate care may be provided in the same bed.

Section 2. Participation Requirements: Each facility desiring to participate as a dual licensed pediatric facility must meet the following requirements:

(1) An application for participation shall be made to the department using the procedures specified by the Commissioner, Bureau for Social Insurance, Department for Human Resources. A vendor number shall be assigned to the facility by the department when participation status is achieved.

(2) Any dual licensed pediatric facility whose admission policies are such as to permit admission of patients who are eligible for Title XVIII benefits shall be required to participate in the Title XVIII health care program before the conditions of participation for Title XIX shall be deemed met. Any such facility refusing to participate in the Title XVIII health care program shall not be certified to participate in the Title XIX program and shall not receive reimbursement through the Title XIX program.

Section 3. Provision of Service: Payment for services shall be limited to those services provided to eligible individuals meeting the criteria for provision of skilled nursing services or determined in accordance with 904 KAR 1:022 or intermediate care services as determined in accordance with 904 KAR 1:024.

Section 4. Utilization Review: The facility shall have in place a program of utilization review which meets the requirements specified in 42 CFR 450.19. Determination of skilled nursing care patient status made by the utilization review committee (and which are available to the department) shall be given due consideration by the department in its determinations of patient status.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: June 29, 1978

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, DHR Building, 275
East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES Bureau for Social Insurance

904 KAR 1:033. Payments for dual licensed pediatric facility services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX

of the Social Security Act. KRS 205.520 empowers the department, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the department for dual licensed pediatric facility services.

Section 1. Dual Licensed Pediatric Facilities: In accordance with the guidelines set forth in 42 CFR section 450.30, the department shall make payment to participating providers on the following basis:

(1) **Method of reimbursement:** A dual licensed pediatric facility shall be reimbursed on a cost-related basis. Such payment shall be prospective in nature with no year end adjustment for routine costs of care. The intermediate care principles as specified in 904 KAR 1:025 shall apply except to the extent variations are provided for herein. The cost of ancillaries are to be excluded from the cost when computing the payment rate and will be reimbursed separately (in accordance with intermediate care principles) with a retroactive settlement.

(2) **Composite rate:** The facility(ies) shall be paid at a composite rate for an ICF-SNF day of care. The following procedures are followed in establishing the composite rate:

(a) The allowable cost for SNF-ICF days of care are determined based on prior year actual costs (or, in the case of a new facility, projected costs which are determined by the department to be reasonable).

(b) Allowable costs are then compared with the number of projected (for new facilities) bed days or the number of bed days based on the prior year's actual utilization to arrive at a per diem composite rate.

(c) For composite rates arrived at by using prior year bed days, the rate is increased by an amount necessary to approximate actual costs using an inflation factor based on the average of the consumer index and the medical services component thereof.

(d) An occupancy factor of ninety (90) percent shall be applied. In the case of new facilities the occupancy factor shall be waived during the first full fiscal year of participation in the program.

(e) A cost incentive and investment factor (CIIF) as determined by the bureau will be applied to prospective current year per diem cost in determination of a final prospective rate for each facility. A CIIF schedule applicable to dual licensed pediatric facilities will be transmitted to appropriate providers.

(3) **Reimbursement limitation:** Payments for days of care shall not exceed the composite upper limit. The composite rate upper limit is constructed to recognize the weighted expenditures of ICF and SNF levels of care considering the prevailing ICF upper limit as well as considering the ratio of ICF to SNF costs on an industry wide basis. The composite upper limit in effect as of June 1, 1978 shall be forty dollars (\$40).

Section 2. Rate Review and Adjustment: For a new facility, the composite rate will be reconsidered to determine if an adjustment is necessary after two (2) full calendar quarters of actual experience in the program as specified in Part I of the intermediate care principles.

Section 3. Eligibility for Reimbursement: A facility shall be eligible for reimbursement from the department only when considered to be a participating vendor, and reimbursement shall be made only for covered services rendered Title XIX eligible recipients meeting patient

status as determined in accordance with applicable regulations.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 12, 1978

RECEIVED BY LRC: September 13, 1978

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, DHR Building, 275
East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES Bureau for Social Insurance

904 KAR 2:009. Emergency assistance program.

RELATES TO: KRS 205.215

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources is authorized by KRS 205.215 to provide short term assistance to families with children in crisis situations as provided for in Title IV-A of the Social Security Act. This regulation sets forth the criteria for eligibility and type and amounts of assistance granted under the Emergency Assistance Program, hereinafter referred to as EAP, as administered in accordance with 45 C.F.R. § 233.120.

Section 1. Eligibility Conditions for Receipt of Emergency Assistance: (1) The Emergency Assistance Program provides assistance to families with dependent children who are destitute or facing destitution if such destitution did not arise because:

(a) Such child who is eighteen (18) years or older or the specified relative of such child refused to accept employment, or training for employment, or terminated such without good cause;

(b) The family voluntarily created the situation for the purpose of receiving emergency assistance;

(c) The family created the situation through money mismanagement; or

(d) The situation is related solely to lack of employment due to normal vacation or layoff periods if there is a job to which to return, and return can be anticipated at the end of the normal vacation or layoff period; or the destitute situation is related solely to lack of work due to weather conditions, if return can be anticipated within thirty (30) days.

(2) Assistance may be provided only after a signed application has been made on behalf of an eligible group as specified in Section 3. Such application may be made by the specified relative, child or an interested party acting on behalf of a child. In the event the application is made by other than the specified relative, and the specified relative states prior to processing of the application that he/she does not wish assistance to be provided at that time in order to conserve family eligibility, the application shall be denied due to lack of proper authority by the applicant.

Section 2. Definitions: Terms used in the EAP program are defined as follows:

(1) Destitution shall be considered to exist when a child is deprived of adequate shelter including utilities, necessary clothing, or sufficient food; and the liquid assets, plus con-

tinuing monthly income of the family, are less than limitations prescribed by the department.

(2) A natural disaster is a fire, flood, storm or earthquake or other occurrences designated as such by the department.

(3) Good cause must always be established in regard to an applicant for emergency assistance if lack of employment has caused the destitution and the responsible relative or child (if age eighteen (18) or over) refused to accept employment or training for employment or terminated employment within the prior six (6) months. Good cause shall not exist if destitution is due solely to direct participation in a labor dispute. ("Direct participation" exists if the individual is: on strike, whether or not such strike is legal; or not working as a result of honoring or refusing to cross picket lines set up by those who are on strike; or not working due to lack of work resulting from a strike situation if employed in a managerial or supervisory position by the firm/organization whose workers are on strike.) Good cause for refusal to accept or continue in an employment situation or training for employment exists only when:

(a) A definite bona fide offer of employment was not made at a minimum wage customary for such work in that community;

(b) The child or responsible relative is unable to engage in such employment or training for mental or physical health reasons;

(c) The child or responsible relative has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours daily; or

(d) Working conditions at such job or training would be a risk to the health or safety of the child or responsible relative.

(4) Gross income is income from all sources before any deductions. Self-employed persons' and farmers' gross income is to be considered as gross profit less business expenses. Any special allowance made in an AFDC case is to be disregarded in computing gross income. In determining destitution of an applicant for AFDC, the AFDC payment is not to be considered as income until actually received by the client and the EAP application is to be processed independently of the AFDC application.

(5) Liquid assets include, but are not limited to, cash on hand, checking accounts, savings accounts, stocks, bonds, certificates of deposit, and similar assets readily convertible to cash. Excluded for purposes of this program are prepaid burial contracts or burial policies, the cash surrender value of life insurance policies, equity in real or personal property, or home insurance settlements received or to be received.

(6) Net income is gross income less mandatory deductions and work related expenses, which include transportation and child care; any special allowance made in an AFDC case is to be disregarded in determining net income.

(7) Specified relative is any relative acting as the person responsible for the child and who is within the degree of relationship shown in Section 406(a)(1) of the Social Security Act.

Section 3. Eligible Groups: Any family which includes a child under twenty-one (21) or an unborn child may qualify for EAP if all other eligibility conditions are met. In addition, a child who, within six (6) months, did reside with a specified relative as defined in Section 406(a)(1) of the Social Security Act may qualify. Specifically excluded is any family who voluntarily creates the destitution or whose need resulted because of refusal without good cause of the

child or responsible relative to accept employment or training for employment or termination of such without good cause as specified above.

Section 4. Limitations for Receipt of Emergency Assistance: (1) Any family which is potentially eligible for any federal assistance program (such as disaster relief, energy assistance, etc., but not including income transfer programs such as Supplemental Security Income, Social Security Benefits, etc.) must apply for those benefits and provide verification of entitlement or award.

(2) Emergency assistance is limited to one (1) period of thirty (30) consecutive days in any (12) twelve consecutive months.

(3) All liquid assets and gross monthly income will be totaled and compared to the financial eligibility scale for the family size. If the amount exceeds that specified, the family is ineligible. If the amount is less than that specified, financial eligibility exists.

Financial Eligibility Scale

Family Size	Income Limitation
1	\$ 265
2	350
3	435
4	520
5	605
6	690
7	775
8	860
9	945
10 or more	1,030

(4) When an application is made by or on behalf of a child who voluntarily establishes a living arrangement independent from his family group, the parent's income and liquid assets must be considered in determining financial eligibility. If a child has not lived with his/her parents during the prior six (6) months, but meets the criteria for inclusion as shown in Section 3, only that amount of income available to the child is to be considered. A child absent from the home for the purpose of attending a school or training course is considered to be a member of the family group remaining in the home, and when application is made under proper authority the income, resources and needs of all family members must be taken into consideration.

Section 5. Needs Which Can Be Met: The Emergency Assistance Program provides for the following needs: food, clothing, shelter, utilities and/or heating fuel, home repairs, home furnishings, transportation, and child care; the stranded or destitute transient or migrant family is assisted to reach its destination through provision of the following as needed; voucher for groceries or prepared meals, overnight lodging, public transportation, car repairs, gas, oil, and information and referral services. Community resources may be utilized to supplement payments provided by the program.

Section 6. Method and Amount of Payment: Emergency assistance payments are made directly to vendors by means of locally authorized voucher or by check drawn in favor of the recipient or recipient and vendor, not to exceed the amounts payable in accordance with Section 7.

Section 7. Payment Limitations in the Emergency Assistance Program. (1) All liquid assets and net monthly income will be totaled and compared to the protected amount on the payment limitation scale for the family size. Any amount in excess of the protected amount will be applied as a deductible to the total amount of the family's needs to alleviate or avoid destitution. (The protected amount is never applied to the amount of need.) A home insurance settlement is to be applied to the need which it is intended to cover. The total amount paid the eligible family group is not to exceed the amount specified in the payment maximum for the family size, except for the separate maximum amounts set forth in subsections (2), (3), and (4)(d) below, for those items.

Payment Limitation Scale

Protected Amount	Family Size	Payment Maximum
\$ 150	1	\$ 200
183	2	265
250	3	330
317	4	395
367	5	460
417	6	525
467	7	590
517	8	655
567	9	720
617	10 or more	785

(2) Payment for limited repairs necessary to make a home owned by the family habitable may in no instance exceed \$1,500, and the need for such repairs must be the result of a natural disaster.

(3) Payment for the repair or replacement of minimum home furnishings determined necessary by the department may in no instance exceed \$1,500, and such need for repair or replacement must be the result of a natural disaster.

(4) A stranded or destitute family (transient or migrant) may be assisted to reach its destination through provision of:

- (a) Voucher for groceries or prepared meals;
- (b) Overnight lodging;
- (c) Public transportation; or
- (d) Car repairs, if needed, not to exceed \$300, and/or voucher for gas/oil.

(5) Food may be provided up to the value of one (1) month's equivalent food stamp allotment for the eligible family members.

(6) Clothing may be provided to eligible family members to ensure a minimum supply of basic apparel in amounts determined necessary by the department.

(7) Shelter needs may be met as necessary to obtain or retain a home or to secure temporary lodging for the destitute family. The department shall make payments for shelter costs in excess of one (1) month's rent or mortgage payment only when such is determined necessary.

(8) Payment for utilities (electricity, gas, and/or water, etc.) may be authorized as necessary to obtain or retain service. The following limitations apply for specific items:

(a) Not more than two (2) tons of coal may be purchased for the family; and

(b) Payment for installation/service of a telephone may not be reimbursed except when medically necessary as verified by a physician or a nurse practitioner.

(9) Child care may be provided on a temporary basis if required due to the imprisonment or hospitalization of the

specified relative. Payment for such must be reasonable and may not exceed eight (8) weeks of care.

Section 8. The provisions of this regulation shall be effective September 16, 1978.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 12, 1978

RECEIVED BY LRC: September 13, 1978 at 11:15 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, DHR Building, 275
East Main Street, Frankfort, Kentucky, 40601.

DEPARTMENT FOR HUMAN RESOURCES Bureau for Social Insurance

904 KAR 2:080. Crises oriented program for emergencies.

RELATES TO: KRS 205.810

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources is authorized by KRS 205.810 to provide short term assistance to single or married adults in crisis situations (i.e., imminent destitution) or in financial need. This regulation sets forth the criteria for eligibility and type and amounts of assistance available under the Crisis Oriented Program for Emergencies, hereinafter referred to as COPE.

Section 1. Application: Each individual or couple requesting assistance will be required to complete an application and provide such information as may be deemed necessary to determine eligibility, in accordance with the procedural requirements prescribed by the department.

Section 2. Definitions: Terms used in the COPE program are defined as follows:

(1) "Destitution" is that situation in which an individual or couple is deprived of the basic necessities of shelter, clothing, or food.

(a) "Lack of shelter" is the inability to pay rent or mortgage, lack of sleeping and cooking facilities (both), inability to pay or secure utilities, or lack of heat during cold weather.

(b) "Lack of food" is the inability to purchase or obtain sufficient food.

(c) "Lack of clothing" is the inability to purchase or obtain appropriate garments in order to protect the individual's or couple's health and welfare.

(2) "Financial need" is defined as a situation in which an individual's or couple's income and resources are below the standards prescribed by the department.

(3) "A single individual" is any person age eighteen (18) or over and not married, or if married, not residing with his/her spouse.

(4) "A couple" is any man and woman legally married (or holding out to the community as married) at least one of whom is age eighteen (18) or over.

(5) "Other family" is any of the following: mother, father, daughter, son, brother, or sister (including relatives

of the half blood) whose spouse also resides in the same household.

Section 3. Eligible Groups: Any single individual or couple (as defined above), who are destitute or in financial need, whose children (if there are any and they are residing with the applicant), are not under twenty-one (21) years of age, may qualify for COPE unless excluded in accordance with Section 4, below.

Section 4. Exclusion of Specified Groups: The following are excluded from eligibility:

(1) An individual or couple who creates the situation of destitution or financial need by money mismanagement, or by refusal to accept or continue employment, or training for employment without "good cause" in accordance with 45 CFR 233.100(a)(3)(ii). Good cause shall not exist if destitution is due solely to direct participation in a labor dispute. ("Direct participation" exists if the individual is: on strike, whether or not such strike is legal; or not working as a result of honoring or refusing to cross picket lines set up by those who are on strike; or not working due to lack of work resulting from a strike situation if employed in a managerial or supervisory position by the firm/organization whose workers are on strike.)

(2) Any single individual under age twenty-one (21) who has been claimed as a tax dependent within the past year, unless it can be substantiated that he/she will not be claimed as a tax dependent in the current year.

(3) Any individual living with both parents.

(4) Any individual or couple living with other family as defined in Section 2(5). (For example, if a man and his wife were living with his brother and the brother's wife, both couples would be ineligible.)

Section 5. Work Registration: A condition for eligibility shall be work registration unless exempt in accordance with 7 CFR 271.3(e).

Section 6. Recoupment of Payments: Any recipient who subsequently receives retroactive benefits for the same period that a COPE payment has been made shall be responsible for reimbursing the department the full benefit amount up to the amount of the COPE payment.

Section 7. Duration of Assistance: Assistance shall be limited to one (1) period of thirty (30) consecutive days in any twelve (12) consecutive months.

Section 8. Income and Resources Limitations: Income and resources of the individual or couple shall be considered in accordance with the following:

(1) All continuing earned and unearned income (less work expenses, mandatory deductions and SMI premium), cash on hand, money in a checking account(s), and non-continuing income shall be considered available in meeting the condition of destitution or financial need.

(2) Both continuing and non-continuing income shall be considered available during the month of approval.

(3) An individual or couple shall be determined ineligible for assistance if monthly net income determined in accordance with Section 8(1) and (2) exceeds \$265 for the individual or \$350 for the couple.

(4) Only liquid assets of the individual or couple shall be considered in determining eligibility. Liquid assets include, but are not limited to, such items as savings accounts, stocks and bonds, and certificates. Total liquid assets in ex-

ness of \$500 for the individual or \$750 for the couple shall result in a determination of ineligibility.

Section 9. Treatment of Income: For any otherwise eligible individual or couple with monthly net income of less than \$265 or \$350, respectively, the first \$150 or \$183, as applicable, of net income shall be protected (disregarded) in determining benefit amounts payable under the program. Income in excess of the protected amounts shall be applied to the needs of the applicant or recipient.

Section 10. Cash Payment Maximum: An otherwise eligible individual or couple shall be entitled to receive such cash payment as may be necessary to bring the total net monthly income up to the respective protected income amounts specified in Section 9 (\$150 for an individual or \$183 for a couple).

Section 11. Needs Payment Maximums: The department shall pay reasonable amounts for food, clothing, and shelter/utilities not to exceed \$200 or \$265 for an individual or couple respectively, in accordance with the following:

(1) Food may be provided up to the value of one (1) month's equivalent food stamp allotment for the eligible individual or couple.

(2) Clothing may be provided to an eligible individual or couple to ensure a minimum supply of basic apparel in amounts determined necessary by the department.

(3) Shelter needs may be met as necessary to obtain or retain a home or to secure temporary lodging for the destitute individual or couple. The department shall pay more than one (1) month's rent or mortgage payment only if such is determined necessary by the department.

Section 12. Right to a Fair Hearing: Any applicant for or recipient of COPE has the right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 13. Agency Determination: Any individual or couple not meeting all eligibility criteria or who do not provide sufficient information necessary to make an eligibility determination shall be found ineligible for benefits under the program. Any individual or couple found to meet all eligibility requirements shall be provided assistance in a timely manner.

Section 14. Effective Dates: The Crisis Oriented Program for Emergencies shall be implemented and continue in effect in accordance with the following:

(1) This regulation shall be effective September 1, 1978.

(2) The COPE program shall be implemented effective September 1, 1978.

(3) The COPE program shall continue throughout each fiscal year after implementation until such time as funds allotted for the program by the legislature have been expended. In the event the Governor, or the Secretary of the Department for Human Resources, makes additional funds available for the continuation or reactivation of the COPE program, the program shall continue or be reactivated under the same terms and conditions as previously set forth in this subsection.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: September 12, 1978

RECEIVED BY LRC: September 13, 1978 at 10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40601.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of Meeting of September 6, 1978

(Subject to Subcommittee approval at its next meeting on October 4, 1978.)

The Administrative Regulation Review Subcommittee held its regularly scheduled meeting on Wednesday, September 6, 1978, at 10 a.m., in Room 327 of the Capitol.

The minutes of the August 2, 1978 meeting were approved. Present were:

Members: Representative William T. Brinkley, Chairman; Senator Donald L. Johnson and Representative Albert Robinson.

Guests: Bernard Keene, Alcoholic Beverage Control; James M. Baker and Thom Rogers, Department of Justice; James M. Heaton, Department of Military Affairs; William Schmidt, State Board of Medical Licensure; Mary Lois Hawkins, Department of Agriculture; Richard S. Smith, Department of Insurance; E. D. Ballard, Department of Revenue; H. Gene Taylor, Department of Personnel; Pamala S. Johnson and William H. Musick, Kentucky Retirement Systems; Billy Hunt, Teachers' Retirement System; Eugene Perkins, Department of Housing, Buildings and Construction; Ellen Hellard and John Lee West, Department of Libraries; Doug Shoulders and Charles Henry, Department of Transportation; Eugene F. Mooney, James Villines, Thomas H. Glover and Hugh N. Archer, Department for Natural Resources and Environmental Protec-

tion; Ed Fossett, Conley Manning, Carlene F. Gobert, Eugene Robinson, Don F. Coffman, Billy R. Howard, Wendell Taylor and Billie R. Downing, Department of Education; W. O. Hubbard, Ked R. Fitzpatrick and Karen Doyle, Department for Human Resources; Fred F. Bradley and Keene Daingerfield, State Racing Commission; Frank W. Burke and Edward H. Flint, Horsemen's Benevolent and Protective Association; Howard G. Myers, Kentucky Forest Industries Association; Philip Thompson, Kentucky Chamber of Commerce; Robert E. Gable, Stearns Coal and Lumber Company; Joseph J. Zaluski, Kentucky Independent Coal Producers Association; Tom Duncan, Kentucky Coal Association.

LRC Staff: Mabel D. Robertson, Garnett Evins, Debbie Herd, Joe Hood, E. Hugh Morris and Glenn Minch.

Press: Maria Braden, Associated Press; Richard Wilson, *The Courier Journal*; John Townsend and Dave White, WLEX-TV; Edmund Shelby and William M. Weathers, Jr., Department of Public Information.

Chairman Brinkley stated that the Subcommittee had received a number of regulations containing erroneous KRS citations each month. He admonished the promulgating agencies to be more careful in order to avoid having regulations rejected for such errors in the future.

On motion of Senator Johnson, seconded by Representative Robinson the following regulations were deferred until the October 4, 1978 meeting:

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Natural Resources**

Division of Water Resources

400 KAR 1:020. Selective timber cutting. (Amended after hearing.)

**DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation**

Division of Water Enforcement

601 KAR 25:030. Registration decal.

DEPARTMENT OF EDUCATION

Office of Superintendent

701 KAR 5:020. Elementary and secondary education hearing officer.

**PUBLIC PROTECTION AND REGULATION CABINET
State Racing Commission**

Thoroughbred Racing Rules

810 KAR 1:012. Horses. (Not amended after hearing.) After hearing testimony from proponents and opponents on the regulation, Senator Johnson moved that it be deferred until the October 4, 1978 meeting, and directed the staff to request an opinion from the Attorney General to clarify the requirements of notice of a public hearing in accordance with KRS 424.130(b). Motion was seconded by Representative Robinson.

The following regulations were approved and ordered filed:

TEACHERS' RETIREMENT SYSTEM

General Rules

102 KAR 1:037. Administrative staff membership.
102 KAR 1:070. Application for retirement.
102 KAR 1:100. Insurance.
102 KAR 1:122. Voluntary and tax-sheltered contributions.

DEPARTMENT OF REVENUE

General Administration

103 KAR 1:020. Wastewater revolving fund payments. (As amended.)

KENTUCKY EMPLOYEES' RETIREMENT SYSTEM

General Rules

105 KAR 1:010. Contributions and interest rates.
105 KAR 1:060. Hospital and medical insurance. (As amended.)

DEPARTMENT OF MILITARY AFFAIRS

National Guard

106 KAR 1:020. Disaster and emergency fund administration; qualification requirements, procedure.

**EXECUTIVE DEPARTMENT FOR FINANCE
AND ADMINISTRATION**

Division of Occupations and Professions

Board of Medical Licensure

201 KAR 9:111. Application, certification requirements. (As amended.)
201 KAR 9:131. Recertification.
201 KAR 9:141. Denial, revocation and suspension of certificate.
201 KAR 9:151. Contracts for support services. (As amended.)
201 KAR 9:161. Skills, authorized procedures.
201 KAR 9:171. Utilization of services.

DEPARTMENT OF AGRICULTURE

Dog Law Administration

302 KAR 5:020. Claim filing procedure.

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

Strip Mining of Coal

405 KAR 1:250. Prime farmland. (As amended.)

Surface Effects of Underground Coal Mining

405 KAR 3:040. Operations affecting two acres or less.

Senator Johnson moved that the vote by which 405 KAR 3:050 was approved at the August 23, 1978 meeting be reconsidered for further amendment. Senator Johnson moved that the amendment to 405 KAR 3:050, Section 4(2) be adopted, seconded by Representative Robinson and carried. Senator Johnson moved that 405 KAR 3:050, as amended, be approved and filed, seconded by Representative Robinson and carried.

DEPARTMENT OF JUSTICE

Kentucky Law Enforcement Council

503 KAR 1:015. Review and approval of proposed curriculums.

503 KAR 1:020. School's certification.

503 KAR 1:030. Instructor's certification.

503 KAR 1:040. Basic training certification.

503 KAR 1:050. In-service schools; certified graduates.

DEPARTMENT OF TRANSPORTATION

Bureau of Vehicle Regulation

Division of Water Enforcement

601 KAR 25:020. Identification numbering system.

601 KAR 25:035. Motorboats that are exempt from registration.

601 KAR 25:080. Life preservers.

601 KAR 25:110. Overloaded vessels prohibited.

601 KAR 25:190. Zoned use areas.

601 KAR 25:200. Marine sanitation devices.

Bureau of Highways

Traffic

603 KAR 5:096. Highway classifications.

DEPARTMENT OF EDUCATION

Bureau of Instruction

Textbooks, Library and Instructional Materials

704 KAR 2:020. Textbook program plan.

Instructional Services

704 KAR 3:010. Administrative and special services.

704 KAR 3:030. Special instructional service units.

704 KAR 3:040. Criteria for the unit of superintendent or assistant superintendent.

704 KAR 3:050. Criteria for the unit of principal.

704 KAR 3:055. Criteria for the unit of instructional coordinator.

704 KAR 3:060. Criteria for the unit of visiting teacher.

704 KAR 3:080. Criteria for the unit of school health coordinator.

704 KAR 3:090. Criteria for the unit of physical education teacher.

704 KAR 3:100. Criteria for the unit of health and physical education program consultant.

704 KAR 3:110. Criteria for the unit of music education teacher.

704 KAR 3:160. Criteria for the unit of local director of vocational education.

704 KAR 3:170. Criteria for the unit of school media Librarian.

704 KAR 3:180. Criteria for the unit of school psychologist and psychometrist.

704 KAR 3:200. Criteria for the unit of business administrator and finance officer.

704 KAR 3:220. Criteria for the unit of supervisor of instruction.

704 KAR 3:230. Criteria for the unit of director of pupil personnel.

704 KAR 3:270. Criteria for the unit of teacher-consultant in programs for exceptional children.

704 KAR 3:295. Criteria for the unit of media consultant.

704 KAR 3:300. Criteria for instructional television coordinates.

Health and Physical Education Programs

704 KAR 4:010. Physical education.

Kindergartens and Nursery Schools

704 KAR 5:050. Public school programs.

Elementary and Secondary Education Act

704 KAR 10:050. Courses not in program of studies; procedure for offering.

Bureau of Vocational Education

Administration

705 KAR 1:010. Annual program plan.

Bureau of Rehabilitative Services

Administration

706 KAR 1:010. State plan for vocational rehabilitation.

Bureau of Education for Exceptional Children

Exceptional and Handicapped Programs

707 KAR 1:003. Annual program plan for the administration of the education of the handicapped act.

DEPARTMENT OF LIBRARY AND ARCHIVES

Libraries

725 KAR 2:010. Public libraries.

PUBLIC PROTECTION AND REGULATION CABINET

Alcoholic Beverage Control

Licensing

804 KAR 4:190. Out-of-state brewers bond.

Department of Insurance

Administration

806 KAR 2:090. Fee for collecting city or urban county government insurance tax.

806 KAR 2:095. Accounting and reporting requirements for collecting insurance tax.

Public Service Commission

Electric, Water, Gas and Telephone Utilities

807 KAR 2:010. General rules.

DEPARTMENT FOR HUMAN RESOURCES

Bureau for Health Services

Drug Formulary Council

902 KAR 1:080. Acetaminophen.

902 KAR 1:081. Acetaminophen with Codeine.

902 KAR 1:110. Diphenhydramine Hydrochloride.

902 KAR 1:220. Propantheline Bromide.

902 KAR 1:328. Chlordiazepoxide Hydrochloride.

Regional Mental Health-Mental Retardation Boards

902 KAR 6:050. Formula for allocation of funds.

Bureau for Social Insurance

Medical Assistance

904 KAR 1:010. Payments for physicians' services.

904 KAR 1:020. Payment for pharmacy services.

904 KAR 1:026. Dental services.

904 KAR 1:035. Payments for screening services.

904 KAR 1:044. Mental health center services.

904 KAR 1:054. Primary care center services.

904 KAR 1:055. Payments for primary care center services.

Public Assistance

904 KAR 2:015. Supplemental programs for aged, blind and disabled.

The meeting adjourned at 12:50 p.m. to meet again at 10 a.m. October 4, 1978 in Room 327 of the Capitol.

